

No. 11080

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN E. GALLOIS, Executor and JEANNE G.
HILL, Executrix of the Estate of MAR-
GARET P. GALLOIS, Deceased,
Petitioners,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

CLYDE C. SHERWOOD, Esq.

JOHN V. LEWIS, Esq.

JEROME POLITZER, Esq.

For Comm'r.:

T. M. MATHER, Esq.

Docket No. 3507

ESTATE OF MARGARET P. GALLOIS,
Deceased, JOHN E. GALLOIS, Executor, and
JEANNE G. HILL, Executrix,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1943

Nov. 26—Petition received and filed. Taxpayer notified. Fee paid.

" 26—Copy of petition served on General Counsel.

Dec. 28—Answer filed by General Counsel.

" 28—Request for Circuit hearing in San Francisco filed by General Counsel.

" 30—Notice issued placing proceeding on San Francisco calendar. Service of answer and request made.

1944

Aug. 10—Hearing set September 18, 1944 at San Francisco, California.

Sep. 22—Hearing had before Judge Van Fossan on merits. Submitted. Petitioner's brief due Oct. 22, 1944—respondent's reply Nov. 22, 1944—Petitioner's reply Dec. 22, 1944.

Oct. 14—Transcript of hearing of 9/22/44 filed.

“ 18—Brief filed by taxpayer. 10/19/44 copy served.

Nov. 11—Reply brief filed by General Counsel.

Dec. 20—Reply brief filed by taxpayer. 12/20/44 copy served.

1945

Feb. 27—Findings of fact and opinion rendered, Van Fossan, J. Decision will be entered for the respondent. Copies served.

“ 27—Decision entered, Van Fossan J. Div. 9.

May 24—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

“ 24—Proof of service filed.

“ 24—Designation of portions of the record, proceeding and evidence to be contained in the record filed by taxpayer with proof of service thereon. [*1]

Tax Court of the United States

Docket No. 3507

ESTATE OF MARGARET P. GALLOIS,
Deceased, JOHN E. GALLOIS, Executor, and
JEANNE G. HILL, Executrix,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, San Francisco IRA:ET:90-D-CSW (C:TS:PD, SF:HMS) dated Aug. 31, 1943, and as a basis for their proceeding, allege as follows:

1. Petitioner John E. Gallois is the Executor and Jeanne G. Hill is the Executrix of the estate of Margaret P. Gallois, Deceased, with central office at 1143 Taylor Street, San Francisco, California. The return for the period here involved was filed with the Collector of the First District of California. The date of death of Margaret P. Gallois was August 8th, 1940. [2]

2. The notice of deficiency, a copy of which is attached and marked "Exhibit A," was mailed to the petitioners on August 31, 1943.

3. The taxes in controversy are estate taxes due for the year 1941. The amount in dispute is the proposed deficiency of \$19,323.36.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

I.

The respondent erroneously held that the value of the property of a certain trust created by an instrument dated August 9th, 1924 is includible in the gross estate under the provision of Section 811(c) of the Internal Revenue Code.

II.

The respondent erroneously held that 1193 shares of Raphael Weill & Co. common stock had a market value of \$119,300.00, when in truth and in fact the value of the 1193 shares of Raphael Weill & Co. stock was \$95,440.00.

III.

The respondent erroneously held that the real estate located at 326-334 Sutter Street, San Francisco, California, had a value of \$75,000.00, when in truth and in fact the value of said real estate was only \$55,000.00.

5. The facts upon which petitioners rely as the basis of this proceeding are as follows:

I.

Margaret P. Gallois died on the 8th day of August, 1940; said decedent at the time of her death was a resident of the City and [3] County of San Francisco, State of California, and her last will was admitted to probate by an order of the Superior Court of the State of California, in and for the City

and County of San Francisco, duly given and made on the 12th day of November, 1940, and John E. Gallois was appointed Executor of the Estate of said Margaret P. Gallois, and Jeanne G. Hill was appointed Executrix thereof, and letters testamentary were issued to them on the 12th day of November, 1940, which are still in full force and effect.

II.

Within the time required by law, the petitioners, John E. Gallois as Executor and Jeanne G. Hill as Executrix, filed an estate-tax return for the Estate of said Margaret P. Gallois, Deceased, with the Collector of Internal Revenue, First District of California, at San Francisco, California.

III.

The petitioners allege that during the years from 1919 to 1922, inclusive, John E. Gallois borrowed a total of \$251,000.00 from decedent, Margaret P. Gallois. On August 9th, 1924, said Margaret P. Gallois created a trust, which is attached hereto as "Exhibit B," to petitioners' Petition and incorporated herein as if here set forth in haec verba. Said trust agreement specifically provided that said Margaret P. Gallois, Emile M. Pissis, and William H. Cook should be the trustees.

IV.

On or about December 1st, 1927, the statute of limitations having run on the obligation of said John E. Gallois in the amount of \$251,000.00 to said Margaret P. Gallois, an agreement was reached be-

tween said John E. Gallois and said Margaret P. Gallois that if [4] said John E. Gallois would execute a promissory note to the trustees of said Margaret P. Gallois in the amount of \$251,000.00, thus reviving the obligation barred by the California Statute of Limitations, and if said John E. Gallois paid said note, he would then be entitled to one half of the property contained in said trust estate created by said Margaret P. Gallois on August 9, 1924, which said trust estate is the trust estate created by the agreement set forth in petitioners' Exhibit B. Said Margaret P. Gallois agreed in consideration of the execution of said note and the future payment thereof, that said Margaret P. Gallois would not withdraw any funds from the trust created by said trust agreement in excess of the income from said trust. It was further understood and agreed between said John E. Gallois and said Margaret P. Gallois that upon the making of substantial payments on account of said note by said John E. Gallois, said John E. Gallois would be made a trustee of said trust in order to protect his interest in the trust property and to prevent any invasion of the trust corpus by the said Margaret P. Gallois. As a further safeguard in the event that said John E. Gallois did not pay the note executed on December 1st, 1927, said John E. Gallois was to execute a resignation as trustee of said trust effective ninety days after the death of said Margaret P. Gallois.

V.

Pursuant to said agreement between said Margaret P. Gallois and said John E. Gallois, said John E. Gallois was duly appointed trustee by the Superior Court of the State of California, in and for the City and County of San Francisco, of the trust estate referred to in petitioners' Exhibit B. On November 7th, 1928, John E. Gallois [5] executed and delivered his said resignation as trustee to take effect ninety days after the death of said Margaret P. Gallois, in accordance with their mutual agreement of December 1st, 1927. Said John E. Gallois paid to said Margaret P. Gallois during the year 1928 cash and stocks totaling \$251,000.00, which amount was placed in said trust. Said agreement of December 1st, 1927 between said Margaret P. Gallois and said John E. Gallois provided that said John E. Gallois would have a full one-half interest in and to the corpus of said trust created by the trust agreement of August 9th, 1924, by said Margaret P. Gallois, subject to the right of said Margaret P. Gallois to use the income from said trust for her life and that said Margaret P. Gallois agreed not to use any of the corpus of said trust after said repayment of the \$251,000.00 by said John E. Gallois.

VI.

Said petitioners John E. Gallois as Executor and Jeanne G. Hill as Executrix in the estate tax return referred to in paragraph 1 for the Estate of said Margaret P. Gallois reported 568 shares of the Raphael Weill common stock in said estate at a

value of \$51,120.00, whereas the actual value of said 568 shares of Raphael Weill & Co. common stock was \$45,440.00.

VII.

Said real estate in said trust referred to in respondent's deficiency letter, Exhibit A hereof, located at 326-334 Sutter Street, San Francisco, California, had a true value on August 8th, 1940, of \$55,000.00. [6]

VIII.

The 625 shares of Raphael Weill & Co. common stock referred to in respondent's deficiency letter incorporated herein as Exhibit A had a value of \$50,000.00 on August 8th, 1940, instead of a value of \$62,500.00 as determined by respondent in said deficiency letter.

Wherefore, your petitioners pray that this Court may hear the proceeding and determine that there is no deficiency due from the Estate of Margaret P. Gallois, Deceased, or from petitioners John E. Gallois, Executor, and Jeanne G. Hill, Executrix of said estate.

CLYDE C. SHERWOOD

JOHN V. LEWIS

JEROME POLITZER

Attorneys for Petitioner. [7]

State of California,

City and County of San Francisco—ss.

John E. Gallois, being duly sworn, says: That he is one of the petitioners above named and that he is the Executor of the Estate of Margaret P. Gal-

lois with full authority to act for said estate by filing this petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements therein contained are true, except those stated upon information or belief, and that as to those, he believes them to be true.

JOHN E. GALLOIS

Subscribed and sworn to before me this 20th day of November, 1943.

[Seal]

THOMAS A. DOUGHERTY

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco—ss.

Jeanne G. Hill, being duly sworn, says: That she is one of the petitioners above named and that she is the Executrix of the Estate of Margaret P. Gallois with full authority to act for said estate by filing this petition; that she has read the foregoing petition and is familiar with the statements contained therein, and that the statements therein contained are true, except those stated upon information or belief, and that as to those, she believes them to be true.

JEANNE G. HILL

Subscribed and sworn to before me this 20th day of November, 1943.

[Seal]

THOMAS A. DOUGHERTY

Notary Public in and for the City and County of San Francisco, State of California. [8]

EXHIBIT A

(Copy)

Form 1236

June 1943

SN-ET-1

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California
Aug. 31, 1943

Office of
Internal Revenue Agent
In Charge
San Francisco Division

IRA:ET:90-D-CSW
(C:TS:PD SF:HMS)

Estate of Margaret P. Gallois, Deceased,
John E. Gallois, Executor and Jeanne G. Hill,
Executrix,

c/o John E. Gallois,
1143 Taylor Street,
San Francisco, California

Re. MT-ET-11454-First California Estate
of Margaret P. Gallois Date of death
—August 8, 1940

Sir and Madam:

You are advised that the determination of the estate tax liability of the above-named estate, discloses a deficiency of \$19,323.36, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING

Commissioner,

(Signed) By R. L. SUTHERLAND

Acting Internal Revenue

Agent in Charge.

Enclosures:

Statement

Form of waiver [9]

ESTATE TAX

San Francisco

IRA:ET:90-D-CSW

(C:TS:PD

SF:HMS

MT-ET-11454-First California

Estate of Margaret P. Gallois

Date of death—August 8, 1940

STATEMENT

	Liability	Assessed	Deficiency
Estate Tax	\$19,772.73	\$449.37	\$19,323.36

In making this determination of the Federal estate tax liability of the above-named estate, careful consideration has been given to the protest dated October 13, 1942, and to the statements made at the conferences held on October 27, 1942 and April 15, 1943, and various intermediate dates.

A copy of this letter and statement has been mailed to your representatives addressed ot Sherwood & Lewis, 333 Montgomery Street, San Francisco, California, in accordance with authority contained in the power of attorney executed by John E. Gallois, co-executer.

ADJUSTMENTS TO NET ESTATE

Net estate for basic tax as disclosed by return.....	None
Net estate for additional tax as disclosed by return.....	\$15,212.97
Additions to value of net estate and decreases in deductions:	
(a) Stocks and Bonds, Schedule B	
of return	\$ 5,942.50
(b) Transfers During Decedent's Life	135,330.43
	<hr/>
	141,272.93
Total	<hr/> \$156,485.90

Adjustment to Net Estate—(Continued)

Reductions in value of net estate and increases
in deductions:

Reductions in value of net estate.....\$ None

(c) Funeral and Administration Expenses,

Schedule J of return:

J 2—Executors' Com-

missions\$157.70

J 3—Attorneys' Fees 157.70 315.40

(d) Debts of Decedent, Schedule

K (?) of return 227.58 542.98

Net estate for additional tax as adjusted.....\$155,942.92

Net estate for basic tax as adjusted\$ 95,942.92

EXPLANATION OF ADJUSTMENTS

Returned Determined

(a) Stocks and Bonds, Schedule B of
return:

Item 1\$ 1,900.00 \$ 1,950.00

2 1,925.00 2,062.50

3 1,625.00 1,700.00

5—568 shares, Raphael Weill &

Co., common 51,120.00 56,800.00

Totals above items\$56,570.00 \$62,512.50

Amount returned 56,570.00

Net estate increased\$ 5,942.50

The values determined for items 1, 2 and 3 of Stocks and Bonds, as shown above, are based upon the means between published stock market quotations.

After careful consideration of all of the relevant factors bearing upon value, it is held that the capital stock of Raphael Weill & Co. had a value of \$100.00 per share on August 8, 1940. (See item 5 above.)

Explanation of Adjustments—(Continued)

(b) Transfers During Decedent's Life,

Schedule G of return	Returned	Determined
Item 5—Trust established by agreement dated August 9, 1924	\$ 0.00	\$135,330.43
Amount returned		0.00
Net estate increased		\$135,330.43

It is held that the value of the property of the trust created by the instrument dated August 9, 1924, is includible in the gross estate under the provisions of section 811(c) of the Internal Revenue Code.

The value determined for said trust estate, as shown above, is established as follows:

Trust asset	Value
Subitem 1 Real estate (326-334 Sutter St., San Francisco, Calif.)	\$ 75,000.00
Subitem 2 102 shares Standard Oil Co. of California, common	1,874.25
Subitem 3 625 shares Raphael Weill & Co., common	62,500.00
Total	\$139,374.25
Less: Charges as follows:	
Subitem 4 Taxes payable	\$3,293.82
Subitem 5 Money of tenants held as security	750.00
Net value includible	\$135,330.43

The value determined for the shares of stock listed at subitem 2 above, is based upon the mean between published stock market quotations. The value of the shares of stock of Raphael Weill & Co. listed at subitem 3 above is determined on the same basis as are similar shares referred to under adjustment (a) hereinabove.

After careful consideration of all of the relevant factors bearing upon value, it is held that the real property situated at 326-334 Sutter Street, San Francisco, California, had a value of \$75,000.00 on August 8, 1940.

Explanation of Adjustments—(Continued)

(c) Funeral and Administration Expenses, Schedule J of return:		Returned	Determined
J 2—Executors' Commissions	\$1,450.00		\$1,607.70
J 3—Attorneys' Fees	1,450.00		1,607.70
		<hr/>	<hr/>
Totals above items	\$2,900.00		\$3,215.40
Amount returned			2,900.00
		<hr/>	<hr/>
Deductions increased			\$ 315.40

Executors' commissions and attorneys' fees are allowed as deductions under the provisions of Sections 81.33 and 81.34 of Treasury Regulations 105 in the increased amounts as shown above, which the evidence submitted by you discloses will be claimed, and which it is reasonably expected will be paid.

(d) Debts of Decedent, Schedule K of return:		
Total of all items listed in return.....	\$2,502.55	\$2,730.13
Amount returned		2,502.55
	<hr/>	<hr/>
Deductions increased		\$ 227.58

The adjustment of the total deduction for Debts of Decedent, Schedule K of the return, as shown above, results from the correction of an error in addition made by you in your return.

COMPUTATION OF ESTATE TAX

	Returned	Determined
Gross estate	*\$ 78,208.50	\$203,278.45
Deductions for basic tax..*	118,307.55	107,335.53
Net estate for basic tax.....\$	0.00	\$ 95,942.92
Gross estate	*\$ 73,520.52	\$203,278.45
Deductions for additional tax	* 58,307.55	47,335.53
Net estate for additional tax	\$ 15,212.97	\$155,942.92
Gross basic tax	\$	1,418.86
Credit for estate and inheritance taxes..		1,135.09
Net basic tax		\$ 283.77
Total gross taxes, (basic and additional)	\$	19,110.30
Gross basic tax		1,418.86
Net additional tax		17,691.44
Total net basic and additional taxes.....		\$17,975.21
Defense tax (10 percent)		1,797.52
Total tax payable		\$19,772.73
Estate tax assessed:		
Amount shown on return and assessed—		
Original, list Sept. 1941 (S), page 100, line 3—		
First California District		449.37
Deficiency		\$19,323.36

* Note: In your return you listed two transfers made by decedent at items 2 and 3 of Schedule G of Transfers during Decedent's Life. The value of these transfers, in the aggregate amount of \$11,515.00, was added by you to the gross estate in error in Schedule O, Recapitulation, of the return. Offsetting this entry, you listed in said Schedule O a deduction for "non-taxable gifts Schedule G" in the same aggregate amount of

\$11,515.00. It is held, that both these entries in your return are in error, should be eliminated, and they have been so considered hereinabove.

[Endorsed]: T.C.U.S. Filed Nov. 26, 1943. [13]

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioners, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition.
4. Denies that the determination of tax set forth in the notice of deficiency is based upon errors as alleged in subparagraphs I, II, and III of paragraph 4 of the petition.
5. I. Admits the allegations contained in subparagraph I of paragraph 5 of the petition.
II. Admits the allegations contained in subparagraph II of paragraph 5 of the petition. [14]
III. Admits the allegations contained in subparagraph III of paragraph 5 of the petition.
IV. For lack of information and belief denies the allegations contained in subparagraph IV of paragraph 5 of the petition.

V. For lack of information and belief denies the allegations contained in subparagraph V of paragraph 5 of the petition.

VI. Admits that petitioners John E. Gallois as Executor and Jeanne G. Hill as Executrix in the estate tax return referred to in paragraph 1 for the Estate of said Margaret P. Gallois reported 568 shares of the Raphael Weill common stock in said estate at a value of \$51,120.00; denies that the actual value of said 568 shares of Raphael Weill & Co. common stock was \$45,440.00.

VII. Denies the allegations contained in subparagraph VII of paragraph 5 of the petition.

VIII. Denies the allegations contained in subparagraph VIII of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

[Signed]

J. P. WENCHEL TMM

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
Special Attorney, Bureau of Internal Revenue.

TMM/s 12/20/43

[Endorsed]: T.C.U.S. Filed Dec. 28, 1943. [15]

Before the Tax Court of the United States

Docket No. 3507

In the Matter of

ESTATE OF MARGARET P. GALLOIS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Room 401, Civic Auditorium,

San Francisco, California,

September 22, 1944—10:00 a. m.

(Met pursuant to notice.)

Before:

Honorable Ernest H. Van Fossan,

Judge

Appearances:

John V. Lewis, Esq., 333 Montgomery Street,
San Francisco, California, appearing on be-
half of Estate of Margaret P. Gallois, Peti-
tioner.

Clyde C. Sherwood, Esq., 333 Montgomery
Street, San Francisco, California, appearing
on behalf of Estate of Margaret P. Gallois,
Petitioner.

Jerome Politzer, Esq., Mills Building, San
Francisco, California, appearing on behalf
of Estate of Margaret P. Gallois, Petitioner.

T. M. Mather, Esq., (Honorable J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent. [19]

PROCEEDINGS

The Clerk: At this time we call Docket 3507, Estate of Margaret P. Gallois.

Mr. Mather: Ready for Respondent.

The Clerk: Will you state your appearance for the record, please?

Mr. Sherwood: For the Petitioner, Clyde C. Sherwood, and my colleague, John V. Lewis.

The Clerk: Is he here?

Mr. Sherwood: He is not here. I believe he is in the hall.

The Clerk: He has to appear. If he is not at counsel table, we cannot accept him.

Mr. Mather: T. M. Mather for the Respondent.

(Whereupon Mr. Lewis entered the Court Room.)

Mr. Lewis: John V. Lewis and Jerome Politzer.

The Clerk: Are you all going to be here?

Mr. Lewis: Yes.

The Clerk: Have you all been admitted to practice?

Mr. Sherwood: Yes.

The Clerk: How do you spell your name, Mr. Politzer?

Mr. Politzer: P-o-l-i-t-z-e-r.

The Clerk: Are all three of you at 333 Montgomery Street?

Mr. Politzer: No, I am in the Mills Building.

The Clerk: Thank you.

The Court: You may state the issues, if you will, Mr. Sherwood.

Mr. Sherwood: Thank you, your Honor.

OPENING STATEMENT ON BEHALF OF PETITIONER

By Mr. Sherwood:

Mr. Sherwood: In this case it is admitted by the pleadings that John E. Gallois is the Executor and his sister is the Executrix of the Estate of Margaret P. Gallois. Margaret P. Gallois died August 8, 1940.

The notice of deficiency in this matter was mailed to the Petitioners on August 31, 1943.

The taxes in controversy are estate taxes claimed to be due for the year 1941. The petition was filed on the basis of errors made by the Commissioner in two respects.

The first matter involves the valuation of various properties included in the Estate. We have decided to present no evidence on those matters. We abandon the contention so raised in our petition.

The matter which we do wish to present to this Court involves the second error made by the Commissioner. The Commissioner included in the Estate of Margaret P. Gallois for tax purposes certain properties of the value of \$135,330.43, which properties were held in trust under the trust agree-

ment executed August 9, 1924, a copy of the trust agreement being [21] annexed as Exhibit "B" to the petition in the case.

The Commissioner held that the value of the trust property was includable in the Estate under the provisions of Section 811(c) of the Internal Revenue Code.

The answer of the Commissioner admits that during the years from 1919 to 1922, John E. Gallois, one of the Petitioners, borrowed \$251,000 from the decedent, Margaret P. Gallois, the grantor of the trust. The Petitioner will prove that in 1924, at the time Margaret P. Gallois made this trust, she borrowed heavily on all of her property, and she had given all of the money which she had obtained from those borrowings to her son, John E. Gallois, and that at that time John E. Gallois was indebted to her in excess of a quarter of a million dollars.

She had another child, Jeanne Gallois Hill, whose husband, Horace Hill, had been a wealthy man, and who at that time had suffered severe reverses, so that the Hills were in straitened circumstances.

Mrs. Gallois' property was heavily encumbered, and John E. Gallois was at that time very much encumbered. He had stocks which had fallen to a point where he was unable to make any payments at all to his mother. The Hills became worried about the fact that John E. Gallois had been loaned virtually all of his mother's estate, and they brought various pressures to bear upon the mother to make

some provision for the Hill [22] family, as a result of which Mr. Gallois had the trust prepared by Mr. Percy Towne, her attorney, and the provisions of that trust appear in the pleadings, and show that the trust estate was to be held for the benefit first of Margaret Gallois for her life, and then for her daughter and her daughter's issue, but it contained a provision that if John E. Gallois should repay the monies which he had borrowed, then he would share in the trust and have a one-half interest in the trust property at the time of her death, but not subject to the restraints of the trust. In other words, he would take the property free and clear at the time of her death.

By 1927, John E. Gallois had commenced to regain his financial position. His stock were going up, and he was able to make some payments on account.

From April 1, 1928 to—no, September 13,—withdraw that.

From December 19, 1927 to September 13, 1928, he paid his mother a total of \$42,000. The stock market continued to go up, and in that latter part of 1928, John E. Gallois was financially able to repay the entire borrowings that he had had from his mother.

At that time he will have proved that he had conversations with his mother concerning the trust, and he felt that if he repaid the money to his mother she would be subject to pressure from the Hills to make advances to them. [23]

Mr. Hill had lost upward of a million dollars, and was in very straitened circumstances, and Mr. Gallois wished to have some limitations placed in the trust so that if he paid this money, his mother would have protection for her lifetime, would not be induced to part with the money for the benefit of the Hills and he would get his half at the time of her death.

So, in the latter part of October, 1928, John E. Gallois made an agreement with Margaret P. Gallois in which he agreed to pay the balance of the indebtedness, although it had long since been barred by the statute of limitations of the State of California. He recognized it as a moral obligation, and he agreed to repay all of the funds. In consideration of that agreement, Margaret P. Gallois agreed to the following conditions:

First, she would not withdraw any funds from the trust in excess of the income from the said trust. The original trust agreement provided that she could request the Trustees for additional funds if they were necessary for her maintenance, in the event that the income was not sufficient, and this was the right to request the Trustees which she agreed to waive and not exercise.

Second, that upon the making of substantial payments on account of said indebtedness by John E. Gallois, John E. Gallois would be made a Trustee of the trust. The original [24] Trustees were two persons, Cook and Pissis, who were not immediate members of the family. By this agreement John E. Gallois was to be substituted as a Trustee, and

the mother desired that his sister also be substituted, so that the upshot of the agreement was that both of the original Trustees who served with Margaret P. Gallois were superseded by John E. Gallois and his sister, Jeanne Gallois Hill.

Mr. Gallois insisted on being a trustee over the objection of his sister, because he wished to protect his interest in the trust property, and to enforce his rights under the agreement with his mother.

Third, it was agreed that upon payment of the \$251,000 indebtedness in full, John E. Gallois would be entitled to a full one-half interest in the corpus of the said estate, subject to the rights of Margaret P. Gallois to use the income from the trust for her life. This agreement was carried out.

On November 7, 1928, a decree of the Superior Court of the State of California, in and for the City and County of San Francisco, permitted the withdrawal of Emile A. Pissis and W. H. Cook, original Trustees, and substituted therefore John E. Gallois and Jeanne Gallois Hill.

A day or two after the substitution of himself as trustee, John E. Gallois paid to the Trustees the sum of \$209,000, which represented the balance of his indebtedness.

Margaret P. Gallois was in good health in 1924 when [25] she made the trust. She was in good health throughout her entire life, until up to the very day of her death. She died in 1940 at the age of 84. Upon her death a decree of the Superior Court of this City and County adjudged John E. Gallois to be entitled to one-half of the trust prop-

erty free and clear of the terms of the trust. The other one-half remains in trust for Jeanne Gallois Hill to be distributed to her issue at the time of her death.

The Court: Mr. Mather.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. Mather:

Mr. Mather: If your Honor please, in determining the deficiency in this case, the Commissioner has included as a part of the gross estate of this decedent the value of the property in the trust. He has included it under the provisions of Section 811(c) of the Internal Revenue Code.

It is the position of the Respondent in this case that the transfer in trust was a transfer to take possession enjoyment at or after death, that there was a provision in the trust instrument with respect to reservation, whereby this property could revert to the trustor. There was also provision in the trust instrument with respect to invasion of corpus, so at no time was it possible to determine whether or not any amount would go to the beneficiaries.

The trust instrument, in Paragraph 5 reads as [26] follows:

“If said Jeanne G. Hill and all her children die without issue prior to the death of said Margaret P. Gallois (who is the trustor) then this trust shall terminate and the trust fund shall vest in said Margaret P. Gallois.”

There is also provision in the trust instrument for invasion of the corpus by the trustor, and Paragraph 9 of the trust instrument we believe to be a testamentary disposition of property. It reads:

“Whereas said Margaret P. Gallois heretofore laid out and expended for the account and benefit of John Gallois the sum of \$251,000, or thereabouts, exclusive of interest, and this agreement is made in part for the purpose of insuring Jeanne G. Hill and her children a benefit which may to some extent correct the discrepancy between the monies received by said Jeanne G. Hill from said Margaret P. Gallois and the outlays of said Margaret P. Gallois on behalf of said John Gallois.

“Now, therefore, notwithstanding anything which may be hereinbefore contained, it is provided that at the time of the death of said Margaret P. Gallois, if there has been paid to her by John Gallois or on his account sums of money sufficient so that said Margaret P. Gallois shall have been reimbursed to such extent that the amount unpaid is less than the value of the assets in the annexed schedule, exclusive of any claim against John Gallois, as appraised at the time of her [27] death, then fifty (50%) per cent of the excess of the value of said property over and above the amount of such outlays remaining unpaid shall go to and vest in the said John Gallois and the balance of said property shall vest as hereinbefore provided.”

The remaining provision of that deals with the death of the trustor.

So, we take the position that the Commissioner properly included the value of this trust property in the estate for the reason that the transfer was to take effect and possession after death, that the trustor had a possibility of reverter, and so provided in the trust instrument, and that the trust instrument provided that she, the trustor, could invade the corpus, so it would be impossible to determine whether or not at the time of her death anything would be available for beneficiaries.

The Court: You may proceed with the evidence.

Mr. Sherwood: I will call Mr. John Gallois.

Whereupon,

JOHN EUGENE GALLOIS

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sherwood: [28]

Q. Will you state your name and address for the record, please?

A. John Gallois, John Eugene Gallois, 1143 Taylor Street, San Francisco.

Q. You are one of the petitioners in this matter, Mr. Gallois? A. I am.

Q. And you are one of the Executors of the Estate of your mother, Margaret P. Gallois?

A. Yes.

Q. You are also the John Gallois who was stated as Trustee in the trust we have discussed here? A. Yes.

(Testimony of John Eugene Gallois.)

Q. On or about August of the year 1924, Mr. Gallois, were you indebted to your mother in any amount? A. I was.

Q. Approximately how much?

A. About a quarter of a million dollars.

Q. From what sources had your mother obtained the monies that she had loaned you?

A. From loans on her securities and properties.

Q. What was your financial position at that time, relative to your ability to repay the money?

A. At that time I could not have repaid it.

Q. Was there any particular reason why you were unable [29] to?

A. I was overstepped in the stock market.

Q. Had you used the money which you had received from her to invest in stocks?

A. I had.

Q. What was the state of your mother's health in 1924?

A. She was a woman around 68 years of age, in very good health for that age.

Q. And she died at the age of 84, I believe?

A. Yes.

Q. What was the condition of her health throughout the period of 1924 until the date of her death?

A. She was in good health until the day of her death.

Mr. Sherwood: I have here, your Honor, a list

(Testimony of John Eugene Gallois.)

of the descendants of Margaret P. Gallois, and for purposes of convenience I have had them typed in a form that the Court can readily follow, and with counsel's consent, I would like to have this offered as our first exhibit.

The Court: Is there any objection, Mr. Mather?

Mr. Mather: No objection.

The Court: Exhibit No. 1.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 1.)

[Printers' Note: Set out in full at page 49.]

Mr. Sherwood: I would like to identify the material on it from the witness, your Honor. [30]

By Mr. Sherwood:

Q. Mr. Gallios, I show you a copy of the Exhibit. The letter "b" which appears under each name indicates the correct birthday and year of birth of each of the parties, does it not, Mr. Gallios? (Hanging)

A. I would say that is correct, except I wouldn't say positively the dates of the two last great grandchildren.

Q. As to the two great grandchildren——

A. I know that the year is correct and that the month is correct, but I wouldn't say those two last days were. I myself don't personally know.

Q. Referring to Jeanne Poett.

(Testimony of John Eugene Gallois.)

A. Born March 4, 1942, and Margaret Haley, born December 17, 1942. I know it is December and March, but the actual date I don't know.

Q. I believe that is sufficient for our purpose, then. And the letter "m" which appears before Harry Poett and John Haley refers to the fact that Cynthia Hill and Peggy Hill, respectively, married those two gentlemen?

A. No, that is the name of those children, isn't it? No, married, that's right.

Q. I merely want to bring out that the letter "b" that is used stands for "born," and "m" stands for "married."

Mr. Gallios, your sister was married to Horace Hill at a time prior to 1924? [31]

A. Horace Hill Jr.?

Q. Yes. And what was Horace Hill Jr.'s financial position in the period from 1924 to 1928?

A. Well, I can say that he inherited about a million dollars from his father, and that during that period he began to get—well, he spent the principal and became worse and worse, as it went along.

Q. Did he lose substantially all of that money eventually?

A. Well, he went through bankruptcy, and through the Frazier-Lemke Act.

Q. Did he take the benefit of the moratory provisions of the Frazier-Lemke Act?

A. Yes.

Q. So he was, we could say, in very straitened circumstances during this period?

(Testimony of John Eugene Gallois.)

A. He was.

Q. You are familiar with the trust instrument which is marked as an exhibit and annexed to the petition which you signed in this matter?

A. The original instrument?

Q. Yes. A. Yes.

Q. And when—withdraw that.

Were you consulted or made aware of the fact that this [32] trust instrument was being executed at the time it was executed?

A. I was ignorant of it.

Q. When, approximately, did you first learn of the existence of this trust agreement?

A. A year or two after this trust was formed, there was a sale of the California Street property, and the Title Insurance Company, in order to give a proper deed, required my signature.

Q. Had the trust been recorded?

A. It was never recorded, to my knowledge.

Q. And therefore your signature was necessary, was that right?

A. The Title Insurance Company required that my signature be on this deed, and that is the first knowledge I had of the trust. I think that was in '26 or '27.

Q. And after you were made aware of the existence of the instrument by the Title Insurance Company, did you ask your mother concerning it?

A. I discussed it with her all the time.

Q. Did she give you any reasons why she had executed the trust agreement?

(Testimony of John Eugene Gallois.)

A. She said that she wanted to see that my sister was protected, inasmuch as she had given me such a big portion of my portion of the estate, and that is the reason that she [33] formed this trust.

Q. Did you have any conversation about the inclusion therein of that provision which Mr. Mather read a while ago, that if you paid up your indebtedness you would be entitled to share in the trust?

A. Oh, I used to talk about that quite often to her.

Q. Can you recall the first time you discussed the trust with her, if she made any remarks about whose idea it was, including that, and so forth?

A. Well, she said how she thought she had made a very fair trust. The way it had been written up at first, she thought it wasn't quite fair to me if I should, through a miracle, if I ever should repay her that amount, and she said that she insisted herself upon a provision in there that in case I did perform this miracle, that I would be protected.

Q. Did your financial position improve after the time when you became aware of the existence of the trust? A. Not until about '27, 1927.

Q. Could you state briefly just what the circumstances were and why it began to improve?

A. Well, I was tied up in the stock of the Federal Telegraph Company, which later became the Kolster Company, and at the time that this trust was formed, the stock was selling around \$5 a share. I had an interest of 30,000 shares, and by the time 1927 came, the stock started to go [34] up, and it

(Testimony of John Eugene Gallois.)

went up to as high as \$90 in the period up to 1928, and I got out very well, and I was able to repay this indebtedness.

Q. As this stock started to go up, but before it got up very far, was any discussion held as to the advisability of your selling out some stock and making payments on this indebtedness?

A. When the stock got up to around 15 and 16, I was being pressed continuously.

Q. By whom?

A. By—especially my brother-in-law.

Q. Mr. Hill?

A. Mr. Hill, yes, and he would discuss it with my mother, that I should sell some of that stock to repay some of the obligations, or partly repay them. I had a great deal of confidence in the stock, and I was stubborn and insisted on holding on. My mother——

Q. Pardon me just a moment.

These obligations you are referring to were the monies that your mother had borrowed on her security, which included the trust properties?

A. And some of her personal properties.

Q. She had borrowed on the trust properties before the creation of the trust? A. Oh, yes.

Q. And those monies were overdue?

A. They were overdue and the banks were pressing us all around. The banks were trying to get me to sell, because I think that naturally they were

(Testimony of John Eugene Gallois.)

after that block of stock, and there was pressure coming on from all around.

Q. Did you in fact make some sales of stock and make some payments on account?

A. There were some things pressing against my mother and her personal estate, not the trust, at that time, and I sold some stock at prices that I figured were far lower than they should have been, just to help her out, and I made some payments to her personally.

Q. And the total of those payments were what?

A. Oh, around between forty and fifty thousand dollars.

Q. I believe the records show \$42,000, do they not?

A. Whatever the records show there, I know is the——

Q. Then did you have any discussion with—withdraw that.

I believe you said that you then soon became in a position where you sold out and was in a position to take care of all of this indebtedness?

A. Well, it was a period of about eight or nine months until I really was in a position to take care of all the indebtedness, that is, from the time of those first payments that I made. [36]

Q. The stock was going up progressively all of that time, was it? A. Yes.

Q. It went up from 16 until finally it got about 90? A. 90.

(Testimony of John Eugene Gallois.)

Q. In October of 1928, were you then in a financial position to pay this obligation, the remainder of it? A. All of it.

Q. And did you have any conversations then, on or about October, 1928, with Margaret P. Gallois concerning the repayment of this money and the trust? A. I did.

Q. Will you tell approximately the time of the conversation?

A. Oh, probably the end of September and during October of 19—I believe it was '27 or '28, 1928.

Q. And your mother at that time lived where?

A. At the Fairmont Hotel.

Q. Were these conversations held in her room?

A. They were held in her room.

Q. Do you recall whether anyone else besides you and your mother were present at these conversations?

A. I generally was alone. I cannot recall of anybody—my sister might have been there once in a while, I don't know. I can't—we quite often talked about these things [37] during that period.

Q. Did you come to any definite understanding with your mother as to what you would do as to repaying this money, and what she would do if you repaid it? You can answer that yes or no.

A. Yes.

Q. All right. Now, will you state what that understanding was?

A. Well, I realized at that time that I was morally obligated to my mother, and that I was not

(Testimony of John Eugene Gallois.)

legally obligated, and having gone through the vicissitudes of those past years and knowing how my mother had worried through those past years, and seeing my sister's financial condition becoming worse and worse, I felt that the shoe was on the other foot at that time, and that I wanted to protect my sister and protect myself. At that time that trust, before I made any re-payments, had no financial backing.

Q. You mean by that that the indebtedness——

A. Was greater.

Q. ——than that market value at that time?

A. Than the market value of the trust. So I realized that I could have made several arrangements with my mother which would have protected her, but I thought that inasmuch as that trust had been founded partly due to what she thought were my errors, that it would only be the fair thing to have [38] this thing go back into the trust, but if that took place, I wanted to have the control of that trust, so that we would never get in the condition that it was in again. In other words, we were to pay off the indebtedness of the trust and really make it something that was good and sound and that never could be touched. I said to mother, I said, "Mother, I am perfectly willing to do this, although I realize that I don't have to do it, with the understanding that you name me as a Trustee, and also that we will never get into this mess again, and that we will never hit the principal (or the

(Testimony of John Eugene Gallois.)

corpus, if you want to call it that) and so, to protect me, I must be a trustee.' To which she agreed.

Q. Did you have anything definitely in mind as a possibility of what your mother might be induced to do with the principal if you did not place this restriction on it?

Mr. Mather: If your Honor please, if this is for the purpose of showing that this was a revocable trust, I will object to it. This is a trust instrument in writing, and is it counsel's position that this is a revocable or an irrevocable trust?

Mr. Sherwood: It is our position that Mrs. Gallois and her son had made an executed agreement. I intend to go on and prove that it was executed by the payment on his part of the money, that therefore it was an additional restriction which the creator of the trust voluntarily put on the trust, [39] and received a valuable consideration therefor.

Mr. Mather: Is it in writing, this restriction?

Mr. Sherwood: It doesn't have to be in writing, under the laws of this State, if it is executed.

The Court: The question is, though, was it in writing?

Mr. Sherwood: It was not in writing. However, I would like to qualify that. The trust instrument itself was not specifically amended, but there are minutes of trustees' meetings which show the agreement, I believe. There was not a formal writing, no, your Honor, but we are relying upon the fact that the agreement was made and was completely executed by the parties.

(Testimony of John Eugene Gallois.)

Mr. Mather: Is this testimony directed to varying the terms of this trust instrument?

Mr. Sherwood: As you say, it is varying the terms. It was an amendment of them, an additional restriction placed upon the creator of the trust, certainly. So, I think the issues that Mr. Mather presented in his opening statement, presented that precise point.

The Court: He may answer.

The Witness: Will you read the question?

(Question read by reporter.)

A. Well, I felt that inasmuch as my mother had done something for me before, she might turn around and do some- [40] thing for my sister or somebody else, and I had that firmly in mind, as I stated before.

Q. Pardon me, I didn't notice that you said that before.

Did your mother agree to the conditions which you have just outlined?

Mr. Mather: Now, if your Honor please, there is a trust instrument here.

The Court: Are you objecting?

Mr. Mather: Yes, I am objecting, if your Honor please.

The Court: I will sustain the objection.

Mr. Lewis: Your Honor, I might state there was completely executed an oral agreement here, which, under the laws of this State, was specifically enforceable as against the mother, which would vary the terms.

(Testimony of John Eugene Gallois.)

The Court: To what are you addressing your remarks?

Mr. Lewis: To you, your Honor.

The Court: I didn't say to whom, I said to what?

Mr. Lewis: On the question as to whether or not we can ask him about this agreement as to what his mother agreed to.

The Court: The objection is sustained because of the form of your question. It is assumed that laid down conditions which she had not done. [41]

By Mr. Sherwood:

Q. Will you state, Mr. Gallois, any further conversation that you recall with your mother, referring not only to what you said, but what she may have said, if she said anything?

A. Well, I made it very specific that I would not put this money back into the trust or pay this thing back unless she agreed to this thing.

Q. What did she say?

A. And she agreed to it, and that is why I was made a Trustee.

Q. You were made a Trustee? A. I was.

Q. Was your sister made a Trustee also?

A. She was.

Q. The two original Trustees were whom?

A. William H. Cook, Secretary of The White House, and Emile Pissis, my mother's brother.

Q. And you were appointed in the stead of one and your sister was appointed in the stead of the other? Your mother remained as Trustee?

(Testimony of John Eugene Gallois.)

A. She remained.

Q. Following the appointment of yourself as Trustee, did you in fact pay the entire indebtedness which you owed your mother? [42] A. I did.

Q. That is the amount that you paid, in addition to the amounts that you had previously paid to her?

A. I did.

Q. Those amounted to the whole amount of \$251,000.?

A. I paid back, besides what I had originally paid her back, \$205,000.

Q. That figure was \$209,000, according to our petition.

A. \$209,000, the statement shows it, I think.

Mr. Sherwood: In order to have before the Court the complete history of this trust, we have obtained certified copies of four decrees of the Court having jurisdiction in this State of the trust. The first one is an order appointing Trustee, that is the time that the witness just referred to, when he and his sister were substituted for the original Trustees. At the same hearing, the Court accepted the first account and made a decree accepting the settlement of the account of the original Trustees in order that they might be discharged. Then, after Mrs. Gallois' death, the surviving trustees filed an account which was accepted by the Court, and I have a decree terminating her life estate in the trust and settling the account of the surviving Trustees and of the decedent.

(Testimony of John Eugene Gallois.)

Then, there was some question of the rights of the [43] minor children, and so on, at the time, and some real property was sold, and a new decree was given by this Court, which passes upon the reversion rights of the children, who were then living, and the Court expressly withholds the passing of payment upon the probability of new errors coming into being.

I think the four together give the Court a clear picture of the operation of this trust, and I would propose to offer them as one exhibit.

Mr. Mather: No objection.

The Court: Exhibit 2 in evidence.

(The documents referred to were marked and received in evidence as Petitioner's Exhibit No. 2.)

[Printer's Note: Set out in full at page 50.]

Mr. Sherwood: You may cross examine.

Cross Examination

By Mr. Mather:

Q. Did your mother write you a letter on November 2, 1928, Mr. Gallois, with respect to the note that you were about to give to her?

A. Well, I don't know. She wrote me—that is, I don't know. I don't know what you have reference to.

Q. You did give a note to your mother, did you not, for \$251,000?

A. Well, yes, I gave a note, yes.

(Testimony of John Eugene Gallois.)

Q. And at the time it was agreed that you were to be [44] appointed a Trustee of the trust, was it not?

A. You mean in the letter there, there was something that I signed for the purposes of accounting to show that I had made that money. I remember a letter like that, if that is the letter you have reference to.

Mr. Sherwood: I suggest we show the witness the letter. It is a long time ago, Mr. Mather.

Mr. Mather: I will get to it presently.

By Mr. Mather:

Q. It was agreed at the time you executed this note, Mr. Gallois, that you were to be appointed one of the Trustees of this trust, was it not?

A. Correct, yes.

Q. And is it my understanding that that was the condition upon which you executed the note, that you would be appointed a Trustee?

A. Correct.

Q. There was also a further condition that you would resign as a trustee 90 days after your mother's death, was there not?

A. That is correct.

Q. You know the date of the note that you executed in connection with this matter, or do you have the note?

Mr. Sherwood: May I say, it appears in the Court decree that it was dated October 30, 1938.

It is in the decree that was just placed in evidence there.

(Testimony of John Eugene Gallois.)

Mr. Mather: I see.

By Mr. Mather:

Q. In connection with the conversations that you had with your mother about the note, she, on November 2, 1928, wrote you a letter, did she not? (Handing.)

A. Well, there was a letter that I demanded. I don't know if that is the letter that I demanded of her.

Q. Is that your understanding of the agreement that you had with her at that time?

A. (After examining.) That is.

Q. Does that letter read as follows:

“As you are about to give your note to myself, Emile A. Pissis and W. H. Cook, as trustees, of the trust created by me in August, 1934, for the sum of \$251,000.00 and as there has been paid to me the following: \$32,000.00 on April 1st, 1928, \$5,000.00 on September 13, 1928, and fifty shares of the White House stock, at a cost of \$4900.00 which you purchased at my request for me, December 19th, 1927, and as these sums and these shares were received from Mr. Horace L. Hill by me for the purpose of applying said amounts and the value of said stock on your said indebtedness of \$251,000.00 owing to the trustees of the said trust created by me in August, 1924, I now desire to state that I have received said sums [46] and said shares of stock from Mr. Hill for the purpose of applying the same on your said account.

“The foregoing payments reduce your indebted-

(Testimony of John Eugene Gallois.)

ness to said trust in the amounts above set forth and I agree to hold myself accountable to said trusts for said sums and the value of said shares."

Did the letter read like that?

A. Correct.

Q. And that correctly sets forth the understanding that you had with your mother at that time?

A. I paid over the sums mentioned in this letter to my mother previous to the re-payment of the \$209,000. Inasmuch as I was indebted to the trust for \$251,000, I was not going to pay the rest of the \$209,000 until I was assured that I would get complete credit for having repaid this whole indebtedness to her. Had I not done that, I would not have felt that at her death I would have gotten what was coming to me, because it would not have shown that I had repaid this in full. Therefore, I demanded this thing as a matter of accounting, and I knew perfectly well that this money had not gone into the trust, but that it was paid to my mother, and this is a true statement of what you asked me. It is exactly as the matter took place.

Mr. Mather: That is all. No further questions.

The Court: Any other questions? [47]

Mr. Sherwood: Just a moment, your Honor.

Redirect Examination

By Mr. Sherwood:

Q. Mr. Gallois, I want to just be sure that there is no confusion in the record on testimony concerning this letter.

Was this letter given to you before or after you

(Testimony of John Eugene Gallois.)

had made the agreement with your mother, that she would have you appointed a Trustee, and the other conditions that you outlined?

A. Was it given before or after?

Q. Yes.

A. Well, as I said before, there had been discussions going right along all the time, and this is—when was it? That is 20 years ago, isn't it, you are asking me about? That is pretty hard to answer, because as a matter of fact in the past, my mother loaned me all this money without even the stroke of a pen, and this letter was given to me at my request.

Q. But did it comprise all of the agreements that you had with your mother?

A. Well, the other agreement was that I was to be a Trustee, and that she would not touch the principal of the trust, and I also knew that once that I was a Trustee, that she could not do that, because I could have stopped it, and [48] I was perfectly protected, and as I say, having a quarter of a million dollars that my mother had handed out to me just on my word and on her word, I didn't think it was necessary between us to have anything. The only thing I did that was for the purpose, accounting purposes. I wanted to know that I was vested in \$251,000, if I wanted to borrow on that, which I did later on, from Russell Hiller. I figured I was vested in \$251,000, and if I had not repaid the thing in full, or if there had been no record that I paid her in full, I would not have been vested in that.

(Testimony of John Eugene Gallois.)

Q. You state that you did continually borrow money on your interest? A. I did.

Q. Did your mother know about that borrowing?

A. She agreed to it and signed it as a Trustee.

Mr. Sherwood: I have here, your Honor, minutes of the meetings of the Trustees of Margaret P. Gallois' trust, referring to the matters which the witness has testified to, and I will just ask the witness:

By Mr. Sherwood:

Q. Do you know where the original minutes are at the present time, Mr. Gallois?

A. Well, they were in the hands of Mr. Platt Kent, the attorney for the Anglo California Trust, and Mr. Kent died, and I think that probably the records of the Anglo California [49] Trust will have this. I don't know, the way some of the banks are on things so far back, it is pretty hard to find them.

Q. Did Mr. Kent furnish you with these copies?

A. He furnished Mr. Percy Towne with those copies.

Q. Who was Mr. Towne?

A. Mr. Towne was the attorney for my mother, and the attorney for the trust, and these were among the papers of the trust.

Mr. Sherwood: Mr. Mather said he has no objection to their being received in evidence, your Honor.

The Court: Exhibit 3 in evidence.

(Testimony of John Eugene Gallois.)

(The documents referred to were marked and received in evidence as Petitioner's Exhibit No. 3.)

[Printers' Note: Set out in full at page 85.]

Mr. Sherwood: I think that is all, your Honor.

The Court: Any other questions, Mr. Mather?

Mr. Mather: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Sherwood: That is all the testimony we have, your Honor.

The Court: Anything on behalf of the Government?

Mr. Mather: Just one moment.

Respondent rests, if your Honor please.

The Court: I think this case lends itself to alternate briefs rather than concurrent briefs. [50]

Mr. Sherwood: It seems to me, your Honor, that alternate briefs would be more satisfactory.

The Court: Thirty days is allowed the Petitioner for opening brief; thirty days thereafter for Respondent's brief, and thirty days for rebuttal.

Mr. Sherwood: That is satisfactory, your Honor. Thank you.

The Clerk: That is October 22nd for the main briefs. Respondent's reply, November 22nd. Petitioner's reply, December 22nd.

(Whereupon, at 11:10 a.m., Friday, September 22, 1944, the hearing in the above-entitled matter was closed.) [51]

PETITIONER'S EXHIBIT No. 1

DESCENDANTS OF MARGARET P. GALLOIS

MARGARET P. GALLOIS

b. March 17, 1856

:

JOHN E. GALLOIS
b. December 28, 1885

JEANNE GALLOIS HILL
b. December 17, 1887

:

:

:

:

Cynthia Hill
b. December 28, 1916
m. Harry Poett, Jr.

Peggy Hill
b. November 26, 1918
m. John Haley

Horace Hill, III.
b. March 23, 1923

:

Harry Poett, III.
b. November 19, 1938
Carolann Poett
b. February 29, 1940
Jeanne Poett
b. March 4, 1942

Louise Haley
b. February 17, 1940
Margaret Haley
b. December 17, 1942

PETITIONER'S EXHIBIT No. 2

Peter A. Breen
407 deYoung Building
EXbrook 3288
San Francisco, California

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 85,434 Dept. No. 9

In the Matter of the Estate of
MARGARET P. GALLOIS, sometimes known as
MARGARET PISSIS GALLOIS or MARGUERITE PISSIS GALLOIS,
Deceased.

DECREE TERMINATING LIFE
ESTATE, ETC.

The petition of John E. Gallois for a judgment establishing the fact of the death of the above-named decedent and fixing the extent and character of the trust estate created by said decedent by a certain trust instrument dated August 9, 1924, and the portion thereof which has vested in said petitioner by reason of the death of said decedent and the portion thereof to remain in the possession of said trustees came on regularly for hearing before the above entitled Court, Honorable Frank H. Dunne (since deceased) Judge presiding, and it having been proved to the satisfaction of the Court that notice of said petition and the time set for

Petitioners' Exhibit No. 2—(Contd.)

the hearing thereof had been given in the manner and form and for the period required by law; and oral and documentary evidence having been introduced by said petitioner, the Court being duly advised in the premises, found that all the facts alleged in said petition were and are true;

That the above-named decedent died in the City and [53] County of San Francisco, State of California, on the 8th day of August, 1940; that said decedent at the time of her death was a resident of said City and County and left estate therein consisting of personal property and a certain document purporting to be her Last Will which, upon due proceedings had and taken, was admitted to probate by an order of the above entitled Court, duly given and made on the 12th day of November, 1940, and John E. Gallois, said petitioner, and Jeanne G. Hill, nominated as such by said Will, were appointed Executor and Executrix thereof by said order, and Letters Testamentary were issued to them on said 12th day of November, 1940, which are still in full force and effect;

That said proceedings for the administration and settlement of said decedent's estate are still pending, and no petition has been filed for distribution of said estate or any part thereof;

That at the time of said decedent's death there was vested in three certain persons as Trustees all that certain real property situate in the City and County of San Francisco, State of California, described as follows:

Petitioners' Exhibit No. 2—(Contd.)

Commencing at a point on the northerly line of Sutter Street, distant thereon 107 feet 6 inches westerly from the westerly line of Grant Avenue, running thence westerly along said northerly line of Sutter Street 41 feet 6 inches; thence at a right angle northerly 126 feet to the southerly line of Harlan Place; thence at a right angle easterly along said southerly line of Harlan Place 41 feet 6 inches; thence at a right angle southerly 126 feet to the northerly line of Sutter Street and the point of commencement.

Being a portion of 50 Vara Lot Number 293.

That said three Trustees were said Margaret P. Gallois, the decedent, Jeanne Gallois Hill, said Executrix, and John E. Gallois, said Executor, the petitioner herein;

That said Trustees were also in possession of certain personal property, to-wit:

102 Shares of Common Stock of the Standard Oil Company of California; and 625 Shares of Common Stock of Raphael Weill & Company; [54]

and they held said real and personal property as trustees subject to the terms of a certain trust instrument dated August 9, 1924; that by the terms of said trust instrument the interest of said decedent in said real and personal property and the income therefrom was to terminate upon the occasion of and by reason of her death and upon the

Petitioners' Exhibit No. 2—(Contd.)

termination of the interest or estate of said decedent in said property the same was to vest in accordance with the provisions of said trust agreement as applied to the facts found to exist at the time of decedent's death;

That it was provided in said trust instrument of date August 9, 1924, that if at the time of the death of said Margaret P. Gallois there had been paid to her by John Gallois, or on his account, on account of the indebtedness of said John E. Gallois to said decedent, for moneys advanced, sums of money sufficient so that the said decedent shall have been reimbursed to such extent that the amount unpaid on account of the indebtedness of said John Gallois to said decedent is less than the value of the assets of said trust estate, exclusive of any claim against said John Gallois as appraised at the time of her death, then 50% of the excess of the value of said trust estate over and above the amount of the unpaid indebtedness of said John Gallois to said decedent, shall go to and vest in said John Gallois, and the balance of said trust estate shall remain in said trust estate;

That prior to the death of said decedent said John Gallois paid to said decedent all sums of money laid out or expended for his account or benefit by said decedent, and all indebtednesses of the said John Gallois to said decedent from any cause whatsoever, and there was not at the time of the death of said decedent any sum of money or other indebtedness due, owing, unpaid or payable from

Petitioners' Exhibit No. 2—(Contd.)

the said John Gallois to said decedent from any cause whatsoever; [55]

That in accordance with the terms of said trust agreement dated August 9, 1924, upon and by reason of the death of said Margaret P. Gallois, an undivided one-half interest in the real and personal property hereinabove mentioned and described as constituting the property of said trust estate, vested in said John Gallois personally, and the interest of said trust and the Trustees thereof, in said one-half of said trust estate terminated, and the remaining one-half of said trust fund shall continue in the possession of said Jeanne G. Hill and John E. Gallois, as surviving trustees of said trust, subject to the terms of said trust instrument of date August 9, 1924;

That at the date of said hearing of said petition on said May 9, 1941, the inheritance tax payable by said John Gallois by reason of the death of said decedent had not been fixed or paid; that by the order of said Court made on said 9th day of May, 1941, granting said petition, the signing of the formal order and decree granting said petition was withheld pending the fixing and payment of the inheritance taxes found to be payable by said John E. Gallois by reason of the death of said decedent;

That as appears from the receipt of the county treasurer of the City and County of San Francisco, State of California, on file herein, all inheritance taxes due to the State of California from all persons interested in the estate of said decedent

Petitioners' Exhibit No. 2—(Contd.)

have been paid in full; and that therefor said order granting said petition, made by this Court on said 9th day of May, 1941, should now be signed:

It Is Therefore Ordered, Adjudged and Decreed that the said Margaret P. Gallois died on the 8th day of August, 1940; and that in accordance with the terms of said trust agreement dated August 9, 1924, upon and by reason of the death of said Margaret P. Gallois, an undivided one-half interest in the real and personal property hereinabove mentioned and described as constituting the property of said trust estate vested in said John Gallois personally, and the interest of said trust and the Trustees [56] thereof in said one-half of said property terminated;

And It Is Further Ordered, Adjudged and Decreed that the remaining one-half of said real and personal property belonging to said trust shall continue in the possession of said John E. Gallois and Jeanne G. Hill, as surviving trustees of said trust subject to the terms of said trust instrument of date August 9, 1924.

Done in open Court this 19th day of June, 1942.

T. I. FITZPATRICK

Judge of the Superior Court

Petitioners' Exhibit No. 2—(Contd.)

The annexed instrument is a correct copy of the original on file in my office.

Attest: Certified Sep. 22, 1944.

H. A. VAN DER ZEE,

Clerk

By H. BRUNNER

Deputy Clerk

[Endorsed]: Filed June 22, 1942.

In the Superior Court of the State of California,
in and for the City and County of San Francisco

No. 325 460

JOHN GALLOIS, sometimes known as John E. Gallois, and JEANNE GALLOIS HILL, sometimes known as Jeanne G. Hill, as surviving trustees of that certain inter vivos trust created by MARGARET P. GALLOIS, sometimes known as Margaret Gallois, during her lifetime, on or about August 9, 1924, and JOHN GALLOIS, sometimes known as John E. Gallois, and JEANNE GALLOIS HILL, sometimes known as Jeanne G. Hill, executor and executrix, respectively, of the last will and testament of said MARGARET P. GALLOIS, deceased.

Plaintiffs,

v.

JOHN GALLOIS, sometimes known as John E. Gallois, and JEANNE GALLOIS HILL, some-

Petitioners' Exhibit No. 2—(Contd.)

times known as Jeanne G. Hill, and MRS. CYNTHIA HILL POETT, MRS. MARGARET HILL HALEY and HORACE L. HILL, III, children of said Jeanne Gallois Hill, individually, and as representatives of the unknown, unascertained and/or unborn remaindermen, contingent and/or otherwise, under said trust above described, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH DOE, EIGHTH DOE, NINTH DOE and TENTH DOE,

Defendants

DECREE SETTLING ACCOUNTS OF TRUSTEES OF AN INTER VIVOS TRUST, AUTHORIZING SALE OF REAL PROPERTY, INSTRUCTING TRUSTEES WITH RELATION TO THEIR POWER OF SALE AND ADJUDICATING INTERESTS IN PROPERTY OF THE TRUST

The above entitled action coming on duly and regularly [58] for trial this day, all parties agreeing in writing to said trial and waiving notice thereof, and the plaintiffs being represented by their attorney, Jerome Politzer, Esq., and John Gallois and Jeanne Gallois Hill, individually, having filed an Answer and appearing in person, and Mrs. Cynthia Hill Poett, Mrs. Margaret Hill Haley, and Horace L. Hill, III, by his guardian ad litem, Henry W. Poett, Jr., appearing and being

Petitioners' Exhibit No. 2—(Contd.)

represented by their attorney, Herbert Chamberlin, Esq., and evidence oral and documentary having been introduced and considered by the court, and said trust instrument and said accounts mentioned in said complaint also having been introduced and considered by the court, and the respective parties hereto having waived in writing Findings of Fact and Conclusions of Law, and the fictitious defendants sued herein as First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe and Tenth Doe, being dismissed, and it duly appearing that all of the above named defendants have appeared herein as representatives of the unknown, unascertained and/or unborn remaindermen and/or beneficiaries, contingent and/or otherwise, under the trust created by said Margaret P. Gallois during her lifetime on or about August 9, 1924 and fully represent said interests, and, the cause having been duly submitted for decision, and it duly appearing that all of the matters and things in said complaint are true and sustained by evidence duly introduced and considered, and that John Gallois, one of the above named parties was and is sometimes known and described as John E. Gallois, and that said Jeanne Gallois Hill, one of said parties above named was and is sometimes known and described as Jeanne G. Hill, and, also, known and described as Mrs. Horace L. Hill, Jr., and that said Margaret P. Gallois, the said trustor and decedent herein mentioned, was sometimes known as and described as Margaret Gallois, Marguerite Pissis [59] Gal-

Petitioners' Exhibit No. 2—(Contd.)

lois and as Margaret Pissis Gallois; that said Margaret P. Gallois died on or about August 8, 1940, and that said John Gallois sometimes known as John E. Gallois and said Jeanne Gallois Hill, sometimes known as Jeanne G. Hill, are the duly appointed, qualified and acting executor and executrix, respectively, of the last will and testament of said Margaret P. Gallois, deceased; that on August 9, 1924 said Margaret P. Gallois executed unto Margaret P. Gallois, herself, and Emile M. Pissis and William H. Cook, a certain indenture of trust, a copy of which is attached to the complaint on file herein and marked Exhibit "A" and also attached to this Decree and marked Exhibit "A" and that said Margaret P. Gallois and Emile M. Pissis and William H. Cook entered upon their duties as such trustees on or about August 9, 1924; that as alleged in said complaint, said Emile M. Pissis and William H. Cook resigned as such trustees, and said John Gallois and said Jeanne Gallois Hill were duly substituted in their place and stead as trustees, and that after the death of said Margaret P. Gallois, said John Gallois and said Jeanne Gallois Hill became and are now the duly appointed, qualified and acting surviving trustees of said trust; that upon the death of said Margaret P. Gallois on or about August 8, 1940, said Jeanne Gallois Hill, sometimes known as Jeanne G. Hill, became the life beneficiary of said trust; that Henry W. Poett, Jr., is the duly appointed, qualified and acting guardian ad litem of said defendant, Horace L. Hill, III, one of the defendants in this action,

Petitioners' Exhibit No. 2—(Contd.)

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that said Margaret P. Gallois in her lifetime and on the 9th day of August, 1924, executed unto Margaret P. Gallois, herself, and to Emile M. Pissis and William H. Cook, a certain indenture of trust, a copy of which said indenture of trust is attached hereto and marked Exhibit "A" and by reference thereto is [60] made a part of this decree as fully as though said indenture of trust was spread out at large herein; and that said Margaret P. Gallois, Emile M. Pissis and William H. Cook, the grantees and trustees named in said indenture of trust, accepted the obligation of said trust as such trustees and on or about the 9th day of August, 1924, entered upon their duties as such trustees; and that thereafter upon settlement of their accounts, said Emile M. Pissis and William H. Cook resigned as such trustees and in their places said John Gallois and said Jeanne Gallois Hill, plaintiffs herein, were named as trustees of said trust to act with said Margaret P. Gallois and that after the death of said Margaret P. Gallois on August 8, 1940, said John Gallois and Jeanne Gallois Hill, plaintiffs herein, became and are now the duly appointed, qualified and acting surviving trustees of said trust and that the accounts of said Margaret P. Gallois, William H. Cook and Emile M. Pissis, as trustees of said trusts, filed on August 20, 1928, before the resignation of said William H. Cook and Emile M. Pissis, were duly settled, approved and allowed by the above entitled court in

Petitioners' Exhibit No. 2—(Contd.)

that certain proceeding pending therein entitled In the Matter of the Trust Estate Created for Margaret P. Gallois and numbered in the records of said Superior Court 198,774;

It Is Further Oredred, Adjudged and Decreed, that said John Gallois, sometimes known and described as John E. Gallois, and Jeanne Gallois Hill, sometimes known and described as Jeanne Gallois Hill, plaintiffs herein, were and are also the duly appointed, qualified and acting executor and executrix, respectively, of the last will and testament of said Margaret P. Gallois, deceased;

It Is Further Ordered, Adjudged and Decreed, that the second and final account of Margaret P. Gallois, deceased, presented [61] by John Gallois and Jeanne Gallois Hill, executor and executrix of the last will of Margaret P. Gallois, deceased, and the First Account of John Gallois and Jeanne Gallois Hill, as trustees of the trust created for Margaret P. Gallois, copies of which are attached to the complaint on file herein and marked Exhibit "B" and the supplemental income account of said John Gallois and Jeanne Gallois Hill, attached to said complaint and marked Exhibit "C", be and the same are hereby adjudged true and correct and are supported by due and proper vouchers and said accounts and all of them are hereby settled, allowed and approved as presented and filed and that said surviving trustees, John Gallois and Jeanne Gallois Hill, on the settlement of said accounts have in their hands, as such trustees, the following amounts of money:

Petitioners' Exhibit No. 2—(Contd.)

\$178.45 on account of principal or corpus of the trust

\$499.37 on account of income of said trust

It Is Further Ordered, Adjudged and Decreed, that the corpus or principal of said trust, in the possession of said surviving trustees, in addition to said sum of \$178.45 above set out, is as follows, to wit:

An undivided 1/2 part of the following real and personal property:

102 Shares of Standard Oil Company of California

625 Shares of Raphael Weil & Company

All that certain piece, parcel or lot of land, situate, lying and being in the City and County of San Francisco, State of California, and more particularly described as follows, to wit:

Commencing at a point on the northerly line of Sutter Street, distant thereon 107 feet 6 inches westerly from the westerly line of Grant Avenue, running thence westerly along said northerly line of Sutter Street 41 feet 6 inches; thence at a right angle northerly 126 feet to the southerly line of Harlan Place; thence at a right angle easterly along said southerly line of Harlan Place 41 feet 6 inches; thence at a right angle southerly [62] 126 feet to the northerly line of Sutter Street and the point of commencement.

Being Portion of 50 Vara Lot Numbered 293.

It Is Further Ordered, Adjudged and Decreed,

Petitioners' Exhibit No. 2—(Contd.)

that said John Gallois, one of the defendants in this action, is the owner in his own right, free from all claims of the trust, of the remaining undivided one-half of said real and personal property more particularly described in the foregoing paragraph in which said trust owns the other undivided one-half part or share;

It Is Further Ordered, Adjudged and Decreed, that at this time the court is making no allowance of fees or commissions for said trustees, John Gallois and Jeanne Gallois Hill, but is allowing and directing said trustees to pay the following fees, as fees for the attorney of said trustees, to wit:

Unto Jerome Politzer, Esq., attorney for said trustees the sum of\$750

together with all expenses incurred in connection with the preparation and filing of said accounts and all costs of suit herein incurred, all of which sums may be paid out, by said trustees, of either the income or principal of said trusts;

It Is Further Ordered, Adjudged and Decreed, that upon the death of said Margaret P. Gallois, on the 8th day of August, 1940, said Jeanne Gallois Hill became and is now the life beneficiary of said trust and is entitled to the net income thereof for and during her lifetime, in accordance with the terms of said trust and that since the death of said Margaret P. Gallois all of said net income from the proportion of the properties namely one-half thereof owned by said trust has been duly paid unto said Jeanne Gallois Hill and all of [63] the in-

Petitioners' Exhibit No. 2—(Contd.)

come from the proportion of the properties owned by said John Gallois personally have been duly paid to said John Gallois;

It Is Further Ordered, Adjudged and Decreed that the presently known contingent beneficiaries of said trust to take after the death of said Jeanne Gallois Hill are the presently living children of said Jeanne Gallois Hill, to wit:

Mrs. Cynthia Hill Poett,
Hillsborough, San Mateo County, California
Mrs. Margaret Hill Haley,
Horace L. Hill, III.,

that the possible contingent beneficiaries other than the presently known children of said Jeanne Gallois Hill are mentioned and provided for by Paragraph Fifth of said indenture of trust, a copy of which is attached to this decree and marked Exhibit "A", but the court withholds for the time being determination as to all contingent beneficiaries until the death of said Jeanne Gallois Hill, when said provision of said trust shall come into force and effect, excepting that the presently known contingent beneficiaries are the said three children of Jeanne Gallois Hill and said John Gallois, one of the defendants herein;

It Is Further Ordered, Adjudged and Decreed, that said surviving trustees of said trust may, and they are hereby instructed that they are so authorized, to sell the undivided one-half part of that certain real property hereinatfer described with said John Gallois the owner of the other undivided one-

Petitioners' Exhibit No. 2—(Contd.)

half thereof to Kernan Robson, or any other purchaser or nominee for the sum of \$70,000.00 for both interests of said trust and of said John Gallois in said real property, the said surviving [64] trustees being entitled to one half of the net purchase price, after all deductions on account of expenses of sale, taxes, and other charges including the real estate commission payable to Louis T. Samuels, amounting to \$2250.00, as prayed in said complaint on file herein:

That the said real property, which said surviving trustees are authorized to sell, as aforesaid, is an undivided one-half part of all that real property situate, lying and being in the City and County of San Francisco, State of California, more particularly described as follows:

Commencing at a point on the northerly line of Sutter Street, distant thereon 107 feet 6 inches westerly from the westerly line of Grant Avenue, running thence westerly along said northerly line of Sutter Street 41 feet 6 inches; thence at a right angle northerly 126 feet to the southerly line of Harlan Place; thence at a right angle easterly along said southerly line of Harlan Place 41 feet 6 inches; thence at a right angle southerly 126 feet to the northerly line of Sutter Street and the point of commencement.

Being Portion of 50 Vara Lot Numbered 293.

It Is Further Ordered, Adjudged and Decreed that under the terms of said trust, Paragraph Sixth

Petitioners' Exhibit No. 2—(Contd.)

thereof, the said surviving trustees of said trust, plaintiffs herein, their survivors, successors and/or substitutes, possess full power and authority to sell any and/or all of the properties and/or assets making up the corpus or principal of said trust including the said undivided one-half interest of said trust in said real property hereinbefore described as located on the North Side of Sutter Street, San Francisco, California, at any time or times and upon terms or conditions as may seem reasonable and advisable to said trustees and for the best interests of said trust and of the beneficiaries thereof without the necessity of applying to this or any court for authority so to do or for confirmation of any such action on their part; [65]

It Is Further Ordered, Adjudged and Decreed, that the named defendants represent any possible beneficiaries not in being or not personally acting herein and that the interests of said named defendants are not in conflict in anywise with any beneficiary not in being or not named and that the named beneficiaries, defendants herein, will not acquire any advantage over any person or persons or beneficiaries not in being or not named herein and that the named defendants and beneficiaries are fair persons to represent any and all persons who might at any time in anywise participate in any of the property of said trusts and that they are proper representatives of said persons:

It Is Further Ordered, Adjudged and Decreed, that all the named defendants have been duly and

Petitioners' Exhibit No. 2—(Contd.)

regularly served with process herein, to wit: with a copy of the Summons issued in said action attached to a copy of the complaint in said action and that this court has jurisdiction over all persons and parties named in said action or interested therein.

It Is Further Ordered, Adjudged and Decreed, that there be allowed and the trustees are directed to pay the sum of \$100.00 as and for a fee to Herbert Chamberlin, Esq., attorney for the defendants represented by him herein, together with all expenses incurred by him in connection with the preparation and filing of the answer of the guardian ad litem and the other defendants herein and all other costs of suit incurred herein, all of which said sums may be paid out by said trustees of either the income or principal of said trust.

Done in Open Court this 3rd day of February, 1944.

THOS. W. FOLEY

Judge of the Superior Court

The annexed instrument is a correct copy of the original on file in my office.

Attest: Certified Feb. 3, 1944.

H. A. VAN DER ZEE,

Clerk

By H. BRUNNER,

Deputy Clerk

[Endorsed]: Filed Feb. 3, 1944.

Petitioner's Exhibit No. 2—(Contd.)

21.60 Plus Tax

Original duplicate

Return to Percy E Towne 407 deYoung Bldg.
San Francisco

This Agreement, made and entered into this 9th day of August, 1924, by and between Margaret P. Gallois, widow, hereinafter called the first party, and Margaret P. Gallois, and Emile M. Pissis and William H. Cook as the second parties, hereinafter called the Trustees,

Witnesseth:

That the said first party has granted, assigned and transferred and by these presents does grant, assign and transfer unto the Trustees all her right, title and interest in the real and personal property set forth and described in the schedule hereunto annexed, marked Exhibit "A" and made a part hereof.

And in order to avoid the recording of this instrument, it is understood and agreed that the said Margaret P. Gallois shall and she hereby agrees to make, execute and deliver to said Trustees a grant of the real property described in said schedule subject, however, to all existing encumbrances, and said real property shall form a part of the trust fund hereby created and such grant and said real property shall be deemed accepted by the Trustees and the title thereto, as well as the title to the personal property described in said schedule, shall be deemed held in trust by said Trustees for the following uses and purposes and upon the following terms and conditions, namely:—

Petitioner's Exhibit No. 2—(Contd.)

First: To receive the income, revenues and profits of the property held and to be held subject to the trust hereby created, and to apply the same as follows:

(a) To the payment of the interest due or to become due on the obligations of the first party which are now or may be hereafter secured by liens on the property described in said schedule, whether such liens be evidenced by mortgage, deed [67] of trust, pledge or otherwise.

(b) To the payment of taxes, assessments, insurance, repairs and all other fixed charges required for the proper preservation, maintenance and upkeep of said property, including commissions, brokerage and any other expense of sale, transfer or other disposition of said properties for the benefit of said trust estate, including the expense of renewal of any existing loans secured by such liens.

(c) After the payment of the charges hereinbefore mentioned, to pay to said Margaret P. Gallois any income or profits still remaining in the hands of said Trustees, which payments to her shall be made monthly, quarterly or semi-annually, as may be most convenient in the handling of said trust fund, having regard to the extent and character of the gross income, the payments to be made therefrom, the time of the receipt of said income by said Trustees, and the time when such preferred charges must be paid in the ordinary course.

Second: The Trustees are likewise authorized and directed to apply to the maintenance and sup-

Petitioner's Exhibit No. 2—(Contd.)

port of said Margaret P. Gallois any portion of the principal of said trust fund which may at any time be in their opinion necessary for her maintenance and support by reason of or in the event of any deficiency in the income of said trust fund;

Third: Upon the death of said Margaret P. Gallois the said trust and the powers and duties of the surviving Trustees shall continue during the life of Jeanne G. Hill, and during her life the net income from said property, as hereinbefore defined, [68] shall be paid by said surviving Trustees to said Jeanne G. Hill.

Fourth: Upon the death of said Margaret P. Gallois if Jeanne G. Hill is still living she shall become one of the Trustees of the fund hereby created in the place and stead of said Margaret P. Gallois, and shall have the same powers as Trustee and shall be subject to the same obligations and duties in that capacity; and any title or interest in said property which the said Margaret P. Gallois had as Trustee by virtue of this agreement, or any conveyance made by her to said Trustees, shall go to and vest in the said Jeanne G. Hill as Trustee in the place and stead of said Margaret P. Gallois, and the surviving Trustees are authorized, empowered and directed to make any conveyance to the said Jeanne G. Hill as Trustee which may be necessary or proper to vest such title in her as one of such Trustees.

Fifth: Upon the death of said Jeanne G. Hill the said trust shall cease and determine and all of said trust property then remaining in the hands

Petitioner's Exhibit No. 2—(Contd.)

of said surviving Trustees shall go to and vest absolutely in equal shares in the children of said Jeanne G. Hill. If, at the time of the death of said Jeanne G. Hill, any of her children shall have died leaving issue, such issue shall receive the share of said trust property to which such deceased child would have been entitled if living. If all of the children of said Jeanne G. Hill should predecease her, then upon her death said trust fund and the whole thereof shall go to and vest in John Gallois, if living, and if he be then dead, then it shall vest in 'the next of kin of said Jeanne G. Hill, in accordance with the succession laws of the State of California then in effect. In the event of the death of said Jeanne G. Hill prior to the death of said Margaret P. Gallois, said trust shall cease and determine upon the death of said Margaret P. Gallois, and said trust fund and the whole thereof shall go to and vest in the children of Jeanne G. Hill and their issue, as hereinbefore provided. If said Jeanne G. Hill and [69] her children die without issue prior to the death of said Margaret P. Gallois, then this trust shall terminate and the trust fund shall vest in said Margaret P. Gallois.

Sixth: As incidental to said trust, the Trustee shall have the power to sell, transfer or convey the property or any part thereof held subject to the trust hereby created; to collect at the maturity thereof any of the securities constituting all or a part of the said property, and to invest and reinvest the proceeds of such sales and the moneys so collected, in such property as is legal and author-

Petitioner's Exhibit No. 2—(Contd.)

ized for investment in accordance with the laws of the State of California relative to investment or loan of funds deposited with Savings Banks; and to exchange the trust property or any part thereof. The property in which such proceeds and moneys may be invested and the property received on such exchange shall be held subject to the said trust, and may likewise be sold or exchanged as often as the Trustees shall see fit, and the proceeds of any such sale or sales invested as before. The Trustees shall also have the power to settle, compromise or pay in full any existing indebtedness of the first party which may constitute a lien or charge upon any of the property described in said schedule. The enumeration herein of the powers of the Trustees shall not be considered to be limitations upon their powers, but the Trustees shall have the power at the expense of the trust estate to do all other things which may be legally done by Trustees for the proper care, control, preservation, management or disposition of the property held subject to the trust hereby created.

Seventh: Neither the said Margaret P. Gallois nor any Trustee appointed to succeed her shall be entitled to compensation for services rendered as Trustee, but the other Trustees herein named shall be entitled to a reasonable compensation for their services rendered under this agreement and shall have a lien upon the property held subject to this trust for such compensation and for reasonable expenses, costs and charges necessarily incurred [70] and actually paid by said Trustees in relation to

Petitioner's Exhibit No. 2—(Contd.)

this agreement, and such payments may be deducted by the Trustees from the trust fund if the income or profits be insufficient to pay the same.

Eighth: Said Trustees assume no responsibility for any act or thing in relation to this agreement, except their own misconduct or neglect.

Ninth: Whereas said Margaret P. Gallois heretofore laid out and expended for the account and benefit of John Gallois the sum of \$251,000, or thereabouts, exclusive of interest, and this agreement is made in part for the purpose of insuring to Jeanne G. Hill and her children a benefit which may to some extent correct the discrepancy between the moneys received by said Jeanne G. Hill from said Margaret P. Gallois and the outlays of said Margaret P. Gallois on behalf of said John Gallois,

Now, therefore, notwithstanding anything which may be hereinbefore contained, it is provided that at the time of the death of said Margaret P. Gallois, if there has been paid to her by John Gallois or on his account sums of money sufficient so that the said Margaret P. Gallois shall have been reimbursed to such extent that the amount unpaid is less than the value of the assets in the annexed schedule, exclusive of any claim against John Gallois, as appraised at the time of her death, then fifty (50%) per cent of the excess of the value of said property over and above the amount of such outlays remaining unpaid shall go to and vest in said John Gallois and the balance of said property shall vest as hereinbefore provided. If, at the time of the death of said Margaret P. Gallois, the amount of such unpaid

Petitioner's Exhibit No. 2—(Contd.)

outlays made by her on behalf of John Gallois still exceeds the then value of the trust fund in the hands of said Trustees, exclusive of any claim against John Gallois, the whole of said fund shall go to and vest in the children of Jeanne G. Hill, after her death as hereinbefore pro- [71] vided, but said John Gallois shall not at any time be deemed indebted to said Trustees or to the estate of Margaret P. Gallois, nor shall any attempt be made by the Trustees or any successors of Margaret P. Gallois to collect any part of said outlays from said John Gallois, and if the same shall at the death of Margaret P. Gallois apparently exist as an indebtedness, such indebtedness shall be deemed forgiven and cancelled, together with any instruments, documents or writings of any kind constituting evidence of any such indebtedness, so that the same cannot go to or vest in any successor of Margaret P. Gallois under the terms of this instrument or otherwise.

In Witness Whereof the parties hereto have caused this agreement to be executed in duplicate the day and year first hereinabove written.

MARGARET P. GALLOIS

EMILE M. PISSIS

W. H. COOK [72]

EXHIBIT "A"

REAL ESTATE

Parcel 1.

Commencing at a point on the northerly line of Sutter Street distant thereon westerly 107 feet 6

Petitioner's Exhibit No. 2—(Contd.)

inches from the westerly line of Grant Avenue; running thence westerly along the northerly line of Sutter Street 41 feet 6 inches; thence at right angles northerly 126 feet to the southerly line of Harlan Place; thence at right angles easterly along the southerly line of Harlan Place 41 feet 6 inches and thence at right angles southerly 126 feet to the point of commencement.

Parcel 2.

Commencing at a point on the southerly line of California Street distant thereon westerly 134 feet from the westerly line of Van Ness Avenue; running thence westerly along the southerly line of California Street 44 feet 3 inches; thence at right angles southerly 137 feet 6 inches; thence at right angles easterly 44 feet 3 inches, and thence at right angles northerly 137 feet 6 inches to the point of commencement.

[Printer's note]: In pencil 99,00 and Sale of prop.

Both Parcels above described are subject to lien created by mortgage or Deed of Trust, given to secure an indebtedness of One Hundred Twenty-Three Thousand (\$123,000.00) Dollars evidenced by promissory notes made by Margaret P. Gallois, payable to The French American Bank of San Francisco.

[Printer's note]: In pencil 63,000 pd. to M.

Petitioner's Exhibit No. 2—(Contd.)

PERSONAL PROPERTY

1500 Shares of the capital stock of Raphael Weill & Co., Inc., evidenced by Certificates as follows:

No. 1062 for 500 shares

No. 1165 for 1000 shares

Both Certificates pledged to The French American Bank of San Francisco to secure a loan of Seventy-five Thousand (\$75,000.00) Dollars.

Claim against John Gallois for moneys laid out and expended on his account by Margaret P. Gallois aggregating \$———, evidenced by a written acknowledgment of such indebtedness. [73]

S-34489

ORDER

John Gallois as Ex. & Tr.

John E. “ alias

Jeanne G. Hill as Exc. & Tr.

Mrs. Cynthia H. Poett

Mrs. Margaret H. Haley

Horace L. Hill III

Margaret P. Gallois Decd

Margaret “ alias

Marguerite P. “ alias

To

Kernan Robson

Recorded at Request of Attorney at 29 Min. Past
2 P. M. Feb 3-1944 4045 Official Records, p. 372.
City and County of San Francisco, California.

[Seal]

THOS. A. TOOMEY,

Recorder [74]

Petitioner's Exhibit No. 2—(Contd.)

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

198793

In the Matter of the Trust Estate
Created for

MARGARET P. GALLOIS.

DECREE OF SETTLEMENT OF ACCOUNT
OF TRUSTEES ACCEPTANCE OF RES-
IGNATIONS OF W. H. COOK AND EMILE
A. PISSIS, AS TRUSTEES, AND DIS-
CHARGE.

W. H. Cook, as Trustee of the above entitled Trust, having heretofore filed an accounting of moneys received and disbursed by the Trustees from the beginning of the administration of said Trust to the 20th day of August, 1928, together with a petition for the settlement of said account and for the acceptance of his written resignation as such Trustee, filed with said account and petition, and Margaret P. Gallois and Emile A. Pissis, the other two Trustees of said Trust, having also filed a similar petition presenting an account identical with that presented by the said W. H. Cook, and praying for the settlement of said account and the acceptance of the resignation of said Emile A. Pissis as Trustee, filed with said account and petition; and

Said accounts, petitions and resignations having come regularly on for hearing before the above

Petitioner's Exhibit No. 2—(Contd.)

entitled court, in Department No. 14 thereof, on Wednesday, the 31st day of October, 1928, at the hour of two o'clock in the afternoon on said day, and said Margaret P. Gallois and Emile A. Pissis being represented in court by Jerome Politzer, Esq., their attorney, and said W. H. Cook being represented by Percy E. Towne, Esq., his attorney, and Jeanne Gallois Hill individually, and as Guardian ad litem for her [75] minor children, Cynthia Hill, Margaret G. Hill and Horace A. Hill, III., being represented by Platt Kent, Esq., her attorney, and John Gallois being also represented by said Jerome Politzer, Esq., said matter was taken up to be heard, and from the testimony taken and all the papers, records and files herein, the Court being duly advised in the premises finds:—

That notice of the hearing of this matter has been given to all parties in interest in the manner and form and for the period prescribed by law and the order of this Court, and all parties in interest are represented by counsel at this hearing.

The Court further finds:—

That at the time of the filing of said petitions, all of the allegations and recitals thereof were true and the same are now true except that since the filing of said petitions said Trustees have secured from said John Gallois a promissory note evidencing the obligation of said John Gallois to said Margaret P. Gallois, mentioned and described in said trust instrument, to-wit: The sum of \$251,-

Petitioner's Exhibit No. 2—(Contd.)

The Court further finds:—

That at this time said trust estate consists of certain real and personal property set forth and described in Exhibit "A" annexed herto and made a part of this decree.

The Court further finds:—

That said Trustees who have filed their resignations herein have persuaded trustworthy successors to petition for appointment as Trustees, to-wit: Jeanne Gallois Hill and John Gallois, and said account should be settled and the resignations of said petitioners, W. H. Cook and Emile A. Pissis, should be accepted and said resigning Trustees should be discharged of [76] further obligation concerning said trust and their trusteeship upon the appointment of their successors and the filing of a receipt by the new Trustees acknowledging the possession of the property constituting the corpus of said trust fund; and

No person having made any objection to the settlement of said account or the granting of said petition or acceptance of said resignations, and all persons in interest having consented thereto,

It Is Ordered that said account as presented by said Trustees be and the same is hereby settled, allowed and approved as rendered.

It Is Adjudged and Decreed that the trust estate of the above entitled trust consists solely of that certain real and personal property set forth and described in said Exhibit "A" annexed hereto and made a part of this decree.

Petitioner's Exhibit No. 2—(Contd.)

It Is Ordered, Adjudged and Decreed that the resignations of said W. H. Cook and Emile A. Pissis, as Trustees in the above entitled matter, be and the same are hereby accepted, and said W. H. Cook and Emile A. Pissis shall be deemed discharged of all further obligation or responsibility as Trustees herein upon the appointment of their successors as Trustees and the filing of a written receipt executed by said new Trustees acknowledging the receipt from said retiring Trustees of the property constituting said trust fund as set forth and described in said Exhibit "A" annexed hereto.

7th November

Done in open Court this ~~31st~~ day of ~~October~~,
1928.

WALTER PERRY JOHNSTON
Judge. [77]

EXHIBIT "A"

Item I.

All that certain real property situate in the City and County of San Francisco, State of California, and particularly described as follows:

Commencing at a point on the northerly line of Sutter Street, distant thereon westerly 107 feet 6 inches from the westerly line of Grant Avenue; running thence westerly along the northerly line of Sutter Street 41 feet 6 inches; thence at right angles northerly 126 feet to the southerly line of Harlan Place; thence at right angles easterly along the southerly line of Harlan Place 41 feet 6 inches,

Petitioner's Exhibit No. 2—(Contd.)

and thence at right angles southerly 126 feet to the point of commencement.

Subject to the lien of a Deed of Trust given to secure a promissory note in favor of the United Bank and Trust Company, of San Francisco, on which the balance of principal is \$99,000.00.

Item II.

Promissory Note of John Gallois dated October 30, 1928, for the sum of \$251,000.00, payable to Margaret P. Gallois, W. H. Cook and Emile A. Pissis one day after date thereof with interest at 6% per annum from maturity.

The Annexed Instrument is a Correct Copy of the Original on file in my office.

Attest: Certified Sep 22, 1944.

H. A. VAN DER ZEE,

County Clerk

By H. BRUNNER

Deputy [78]

[Endorsed]: Filed Nov. 13, 1928.

Petitioner's Exhibit No. 2—(Contd.)

In the Superior Court of the State of California, in
and for the City and County of San Francisco.

In the Matter of the Trust Estate

Created for

MARGARET P. GALLOIS

ORDER APPOINTING TRUSTEES

The verified petitions of Margaret P. Gallois, Emile M. Pissis and W. H. Cook, trustees, in the above entitled matter praying for the appointment of successor trustees to W. H. Cook and Emile M. Pissis of the trusts created for Margaret P. Gallois referred to in said petition, dated August , 1924, executed and delivered by said Margaret P. Gallois to herself, said Emile M. Pissis and W. H. Cook, to fill the vacancies caused by the resignation of said Emile H. Pissis and W. H. Cook, coming on regularly to be heard before the above entitled Superior Court on this 7th day of November, 1928, and it appearing from the evidence introduced on the said hearing that the said Emile M. Pissis and W. H. Cook resigned as trustees of the said trusts on August 15th, 1928, and that because of the resignation of said Emile M. Pissis and W. H. Cook as such trustees it is necessary that trustees of the trust created by the said declaration of trust be appointed to fill the vacancies caused by the resignations aforesaid, and that all the beneficiaries of the trusts under the said declaration of trust now living, namely, Margaret P. Gallois, Jeanne Gallois Hill, John Gallois and Jeanne Gallois Hill as the

Petitioner's Exhibit No. 2—(Contd.)

guardian ad [79] litem of her minor children, Cynthia Hill, Margaret G. Hill and Horace L. Hill, III, have requested that said Jeanne Gallois Hill be appointed in the place and stead of said W. H. Cook, and that said John Gallois be appointed in the place and stead of Emile M. Pissis, as trustees under the said declaration of trust, and that the said Jeanne Gallois Hill and John Gallois are suitable persons to be appointed trustees of the said trust and that all the allegations of the said petitions with respect to the appointment of the said trustees are true:

Now, Therefore, It Is Hereby Ordered that the said Jeanne Gallois Hill and the said John Gallois be and they hereby are appointed trustees of the trusts under the said declaration of trust, and that the said Jeanne Gallois Hill and the said John Gallois be and they are hereby directed to enter upon the discharge of the duties of trustees under the said declaration of trust, and to exercise all the rights, privileges and authorities vested in the said Jeanne Gallois Hill and said John Gallois as such trustees under the said declaration of trust, and to be subject to all the liabilities and responsibilities arising therefrom.

Done in open Court this 7th day of November, 1928.

WALTER PERRY JOHNSON
Presiding Judge of the Su-
perior Court.

[Endorsed]: Filed Nov. 13, 1928.

Petitioner's Exhibit No. 2—(Contd.)

State of California

City and County of San Francisco—ss.

I, H. I. Mulcrevy County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court, in and for said City and County.

Hereby Certify, the foregoing to be a full, true and correct Copy of the Original Order Appointing Trustee in the above entitled cause, filed in my office on the 13th day of November A. D. 1928.

Attest my hand and Seal of said Court this 13th day of November A. D. 1928.

[Seal]

H. I. MULCREVY

Clerk

By H. BRUNNER

Deputy Clerk [80]

No. 198773—Dept. 14

Superior Court

State of California

City and County of San Francisco

In the Matter of the Trust Estate Created for

MARGARET P. GALLOIS

ORDER APPOINTING TRUSTEES

CERTIFIED COPY

[Endorsed]: Filed Nov. 13, 1928.

PETITIONER'S EXHIBIT No. 3

(Copy)

Meeting of the Board of Trustees of the Margaret P. Gallois Trust, held in the office of Platt Kent, Monday, October 28, 1929.

Present: Mrs. Margaret P. Gallois, Mrs. Jeanne Gallois Hill, Mr. John Gallois.

Mr. Platt Kent acted as Secretary.

It was unanimously resolved that a letter be addressed to Messrs. Russell, Miller & Co. authorizing this firm to call the trust funds which are at present on the call money market and directing them to issue a check in favor of the Trustees.

It was also unanimously agreed that for the time being the money obtained in closing out the account at Russell, Miller & Company shall be invested in a Certificate of Deposit pending further developments in the stock market.

The Trustees also agreed to honor an assignment made by Mr. John Gallois of his beneficial interest in the Trust in favor of Messrs. Russell, Miller & Company in an amount not exceeding \$15,000. In the event Mr. John Gallois should become entitled to any disbursement from said Trust he will submit documentary evidence of the liquidation of his obligation with Russell Miller before this assignment will be considered null and void.

There being no further business to be transacted the meeting adjourned.

Secretary:

(Signed) PLATT KENT

Approved:

(Signed) MARGARET P. GALLOIS

(Signed) JOHN GALLOIS

(Signed) JEANNE GALLOIS HILL [82]

MINUTES OF MEETING OF TRUSTEES OF THE MARGARET P. GALLOIS TRUST

A meeting of the trustees under the Margaret P. Gallois Trust was held at the office of Platt Kent, 114 Sansome Street, San Francisco, on Wednesday, the 19th of June, 1929, at 3:00 P.M.

There were present at the meeting Margaret P. Gallois, John Gallois and Jeanne Gallois Hill.

Mrs. Margaret P. Gallois was unanimously elected Chairman of the Board of Trustees and thereafter presided at the meeting.

Mr. Platt Kent was unanimously appointed Secretary of the Board until further notice and thereafter acted as Secretary of the meeting.

The action of the Board in paying off the mortgage held by the United Bank and Trust Company, French American Branch, now the Bank of America of California, was ratified and approved.

The action of the Board in appointing Madison & Burke, real estate and insurance agents, as Manager for the building located at 326, etc Sutter

Street, and directing that this firm pay any proceeds derived from the operation of said building monthly to Mrs. Margaret P. Gallois was also ratified and confirmed.

The Secretary was directed to write Madison & Burke a letter advising them as to the confirmation of their appointment and directing them to collect all income to be derived from said property from rents and other sources and from said income to make disbursements of all expenses necessarily incurred in the maintenance and operation of said building, with the exception of taxes, and directing further that the commission to be paid said Madison & Burke for taking such action should be the sum of \$7.00 per month, together with such commissions as the said firm might from time to time earn in renting any portion of the premises, such commissions to be fixed on the basis prescribed by the San Francisco Real Estate Board, the net proceeds after the expenses above referred to to be paid to Mrs. Margaret P. Gallois as heretofore.

The Secretary was also directed to write Mr. W. H. Cook of the White House requesting him to forward to the Secretary tax bills on said building and real property which he may from time to time pay for account of the Trust.

The Trustees authorized the payment of the sum of \$5,079.97 to Mrs. Margaret P. Gallois, being the interest earned on the sum of money deposited in the name of the Trustees with Russell, Miller & Co., brokers, of this city, from November 9, 1928, to and including May 8, 1929. [83]

The Crocker First National Bank was named as depositary and the Trustees authorized a deposit of \$5,000 with said bank as a fund to be used for general expenses of the trust, said sum to be drawn upon by checks signed by any two of the Trustees.

The Crocker First Federal Trust Company was appointed depositary of such securities as might be purchased for account of the trust, said securities to be deposited with said Trust Company with instructions to cut the coupons on such bonds as may be deposited and pay the proceeds thereof to Margaret P. Gallois as such coupons mature from time to time. Such securities are to be withdrawn from said Trust Company only upon the written consent of all the Trustees.

No further business coming before the meeting, said meeting adjourned.

(Signed) PLATT KENT

Secretary

We the undersigned do hereby approve the foregoing and certify that it is a true and correct statement of the proceedings had at the meeting referred to.

(Signed) JOHN GALLOIS

Trustee

(Signed) MRS. E. GALLOIS

(Signed) (Margaret P. Gallois)

Trustee

(Signed) JEANNE GALLOIS HILL

Trustee

[Endorsed]: T.C.U.S. Filed Sept. 22, 1944. [84]

[Title of Tax Court and Cause.]

Docket No. 3507

Promulgated February 27, 1945

Where decedent created a trust naming herself as one of three trustees, reserving a life estate in the income and providing that in case of any deficiency in such income, the trustees should apply to her maintenance and support any part of the trust corpus which, in their opinion, might be necessary for such purpose, Held, the value of the trust corpus is includible in the decedent's gross estate under section 811 (c), I.R.C., as a transfer intended to take effect in possession or enjoyment at or after death. *Blunt v. Kelly*, 131 Fed. (2d) 632, followed.

John V. Lewis, Esq.,
Clyde C. Sherwood, Esq., and
Jerome Politzer, Esq.,
for the petitioners.

T. M. Mather, Esq.,
for the respondent.

The respondent determined a deficiency in estate tax against the Estate of Margaret P. Gallois in the amount of \$19,323.36.

The single issue in controversy is whether the entire value at the date of death of the corpus of a trust created by her on August 9, 1924, is includible in the decedent's gross estate under the provisions of section 811 (c) of the Internal Revenue Code. Another issue raised by [85] the pleadings has been abandoned by the petitioners.

FINDINGS OF FACT

Margaret P. Gallois, hereinafter called the decedent, was born March 17, 1856, and died testate on August 8, 1940, a resident of the city and county of San Francisco, California. The petitioners, John E. Gallois and Jeanne G. Hill, are the duly qualified and acting executor and executrix, respectively, of her last will and testament. The estate tax return was filed with the collector of internal revenue for the first district of California.

Prior to August, 1924, the decedent had loaned to her son, John E. Gallois, the sum of \$251,000 with no evidence of the indebtedness being executed in writing. In order to make this loan she had heavily encumbered her own property. Because she had advanced to her son such a large part of his portion of the estate, the decedent desired to protect the interest of her other child, Jeanne G. Hill. Therefore, on August 9, 1924, she executed a trust, naming herself, Emile M. Pissis and William H. Cook as trustees.

The trustees were directed to apply the income of the trust, (a) to the payment of interest due or to become due on the obligations of the decedent, secured by liens on the trust property; (b) to the payment of taxes, assessments, insurance, repairs, etc.; and (c) after payment of the above charges, to pay the remainder of the net income to the decedent.

Other material provisions of the trust are as follows:

Second: The Trustees are likewise authorized and directed to apply to the maintenance and support of said Margaret P. Gallois any portion of the principal of said trust fund which [86] may at any time be in their opinion necessary for her maintenance and support by reason of or in the event of any deficiency in the income of said trust fund.

Third: Upon the death of said Margaret P. Gallois the said trust and the powers and duties of the surviving Trustees shall continue during the life of Jeanne G. Hill, and during her life the net income from said property, as hereinbefore defined, shall be paid by said surviving Trustees to said Jeanne G. Hill.

* * * * *

Fifth: Upon the death of said Jeanne G. Hill the said trust shall cease and determine and all of said trust property then remaining in the hands of said surviving Trustees shall go to and vest absolutely in equal shares in the children of said Jeanne G. Hill. If, at the time of the death of said Jeanne G. Hill, any of her children shall have died leaving issue, such issue shall receive the share of said trust property to which such deceased child would have been entitled if living. If all of the children of said Jeanne G. Hill should predecease her, then upon her death said trust fund and the whole thereof shall go to and vest in John Gallois, if living, and if he be then dead, then it shall vest in the next of kin of said Jeanne G. Hill, in accordance with the succession laws of the State of California then in effect. In the event of the death of said

Jeanne G. Hill prior to the death of said Margaret P. Gallois, said trust shall cease and determine upon the death of said Margaret P. Gallois, and said trust fund and the whole thereof shall go to and vest in the children of Jeanne G. Hill and their issue, as hereinbefore provided. If said Jeanne G. Hill and all her children die without issue prior to the death of said Margaret P. Gallois, then this trust shall terminate and the trust funds shall vest in said Margaret P. Gallois.

* * * * *

Ninth: Whereas said Margaret P. Gallois heretofore laid out and expended for the account and benefit of John Gallois the sum of \$251,000, or thereabouts, exclusive of interest, and this agreement is made in part for the purpose of insuring to Jeanne G. Hill and her children a benefit which may to some extent correct the discrepancy between the moneys received by said Jeanne G. Hill from said Margaret P. Gallois and the outlays of said Margaret P. Gallois on behalf of said John Gallois.

Now, therefore, notwithstanding anything which may be hereinbefore contained, it is provided that at the time of the death of said Margaret P. Gallois, if there has been paid to her by [87] John Gallois or on his account sums of money sufficient so that the said Margaret P. Gallois shall have been reimbursed to such extent that the amount unpaid is less than the value of the assets in the annexed schedule, exclusive of any claim against John Gallois, as appraised at the time of her death, then fifty (50%) per cent of the excess of the value of

said property over and above the amount of such outlays remaining unpaid shall go to and vest in said John Gallois and the balance of said property shall vest as hereinbefore provided. If, at the time of the death of said Margaret P. Gallois, the amount of such unpaid outlays made by her on behalf of John Gallois still exceeds the then value of the trust fund in the hands of said Trustees, exclusive of any claim against John Gallois, the whole of said fund shall go to and vest in the children of Jeanne G. Hill, after her death as hereinbefore provided, but said John Gallois shall not at any time be deemed indebted to said Trustee or to the estate of Margaret P. Gallois, nor shall any attempt be made by the Trustees or any successors of Margaret P. Gallois to collect any part of said outlays from said John Gallois, and if the same shall at the death of Margaret P. Gallois apparently exist as an indebtedness, such indebtedness shall be deemed forgiven and cancelled, together with any instruments, documents or writings of any kind constituting evidence of any such indebtedness, so that the same cannot go to or vest in any successor of Margaret P. Gallois under the terms of this instrument or otherwise.

The decedent retained no power to alter, amend or revoke the trust.

At the time the trust was created, the decedent was 68 years of age and in good health for a woman of that age. She had 2 children, John aged 38, and Jeanne aged 36, and 3 grandchildren of the ages of 7, 5 and 1, respectively, all being the children of Jeanne. She left surviving her at her death her 2

children, 3 grandchildren, and 3 great grandchildren, Harry Poett III, aged 1 year and 8 months, Carolan Poett, aged 5 months, and Louise Haley, aged 5 months.

The decedent's son was unaware of the trust at the time of its creation and did not learn of its existence until about 2 years later.

Decedent's daughter, Jeanne, was married to Horace Hill, Jr., who [88] had been well off, but who, in the period from 1924 to 1928, was in very straitened circumstances. It was to protect her daughter from further loss that the decedent had created the trust. The trust had an indebtedness greater than the market value of the property in the trust and John was constantly being pressed by Hill and others to pay the amount he owed his mother. He was unable to make any payments on his indebtedness until 1927. Between December 19, 1927, and September 13, 1928, he made payments aggregating about \$42,000.

By October, 1928, John was financially able to pay the balance of the money he had borrowed from his mother. At that time he and the decedent agreed orally that he would pay back the sums he had borrowed upon condition that he was made a trustee and that the corpus of the trust would not be invaded again. She agreed to these conditions and John then executed his promissory note, dated October 30, 1928, in the sum of \$251,000, to the trustees.

Following this, and on November 7, 1928, two of the original trustees, Emile Pissis and William H. Cook, resigned, and John E. Gallois and Jeanne G.

Hill were appointed trustees in their place. Following his appointment as trustee, John paid the balance of his indebtedness.

On June 19, 1942, the Superior Court of the state of California in and for the city and county of San Francisco, entered a "Decree Terminating Life Estate, etc." in which it was adjudged that "upon and by reason of the death of said Margaret P. Gallois, an undivided one-half interest in the real and personal property hereinabove mentioned and described as constituting the property of said trust estate, vested in said John Gallois personally, and the interest of said trust [89] and the Trustees thereof, in said one-half of said trust estate terminated."

OPINION

Van Fossan, Judge:

The issue for our determination is whether or not the corpus of the trust created by the decedent on August 9, 1924, is includible in her gross estate under the provisions of section 811 (c) of the Internal Revenue Code. The section is set forth in the margin.¹

¹Sec. 811. Gross Estate.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(c) Transfers in Contemplation of, or Taking Effect at Death.—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation

The petitioners contend that no part of the trust is includible in the decedent's gross estate under section 811 (c), but that it is squarely within the provisions of that section excepting "a bona fide sale for an adequate and full consideration in money or money's worth." They premise their argument on the following:

By December, 1927, the statute of limitations had run on John Gallios' indebtedness to the decedent and he was under no legal obligation to pay any part thereof; furthermore, prior to the payments by him, the trust properties had no value since they were encumbered to an extent in excess of their fair market value. Therefore, conclude the petitioners, the payment by John Gallois, which he was not legally obligated to make, and which gave value to

of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter. [90]

the trust properties, constituted the payment of a full and adequate consideration for a one-half interest in the trust, and brings the case within the exception provided in section 811 (c).

We are not impressed by this contention. Although the statute of limitations may have run on the indebtedness so as effectively to bar an action by the decedent for its payment, there can be no doubt that the obligation itself remained. The statute of limitations merely bars the remedy of the creditor but does not totally discharge the right. Williston on Contracts, Vol. 6, Section 2002. The fact that a debt is barred by the statute of limitations in no way releases the debtor from his moral obligation to pay it. *Booth v. Hoskins*, 75 Cal. 271, 17 Pac. 225. John Gallois admitted that he recognized his moral obligation to his mother and the testimony indicates that both he and the decedent considered his payments as a discharge of this obligation. It is clear, we think, that the payments constituted the satisfaction of this debt and not a sale and that the petitioners' contention cannot be sustained.

We turn, therefore, to a consideration of the other provisions of section 811 (c). It should be noted at the outset that, since the trust was created prior to the joint resolution of March 3, 1931, the corpus [91] is not taxable solely because of the fact that the decedent reserved to herself the trust income during her life, *Hassett v. Welch*, 303 U. S. 303; *May v. Heiner*, 281 U. S. 238; *Estate of Ed-*

ward E. Bradley, 1 T. C. 518, and the respondent does not contend otherwise.

The respondent contends that the corpus of the trust must be included in the decedent's gross estate as a transfer intended to take effect in possession or enjoyment at or after death, since the trust instrument provided that the corpus might be invaded for the benefit of the settlor, and hence it could not be determined until that time whether any of the trust would pass to the named remaindermen.

We think this contention must be sustained. Under the terms of the trust, the trustees were authorized and directed to apply to the maintenance and support of the decedent any part of the trust corpus which, at any time, might be necessary, in their opinion, for her maintenance and support, because of any deficiency in the trust income.

The case at bar in this respect is substantially the same as that of *Blunt v. Kelly*, 131 Fed. (2d) 632. There the decedent created a trust providing in part that should, in their opinion, the necessity arise, the trustees were empowered to use such portion of the principal of the trust fund as might seem proper for the support, care or benefit of the settlor. The decedent was not a trustee but one of the trustees was her son, who was also a remainderman under the trust.

It was argued that, since one of the trustees was a remainderman and therefore had an interest adverse to that of the settlor with respect to the principal, she thereby effectively terminated her interest therein. In answer, the Court said: [92]

* * * It is true that under this provision the trustees, one of whom held an adverse interest, were required to form an opinion as to the existence of any such necessity, but in so doing the trustees were not making a free and uncontrolled decision. They were of course bound to form their opinion on the existence of any such necessity in good faith and were subject to the control of the equity courts if they failed to do so. [Citations]. Under these circumstances, * * * the transfer * * * did not take effect in possession and enjoyment until the death of the settlor since, until then, it might have become necessary under the terms of the trust to apply the principal to her support, care or benefit.

We can see no substantial difference between that case and the one before us. In fact, the instant case is stronger for the Government in this respect since the decedent, the grantor of the trust, was also one of the trustees.

The petitioners contend, however, that the decedent relinquished this right by the oral agreement she made with her son in 1928; and that, after that time, she had no power to invade the corpus for her own benefit.

The only evidence of this agreement is found in the testimony of John Gallois. He testified that at the time he repaid his mother he insisted upon being made a trustee and on having his mother agree that the corpus would not be touched again, since he felt that inasmuch as his mother had aided him, she might at a future date assist her daughter, who

was then in straitened circumstances, or some other person. He stated that he realized that his sister's financial condition was growing worse and worse and that he wanted to have control of the trust in order to protect his sister and himself.

It does not appear from the above that the decedent and her son had more than an oral agreement that she would not again encumber the [93] trust property in order to render financial assistance to her daughter, or some other person, as she had previously aided her son. Assuming full faith and effect be given to this agreement, there is nothing to show that the decedent relinquished the right to have the principal of the trust applied to her own use and benefit, if the necessity should arise, or that her son would object to such a use of the trust corpus. Moreover, there is no evidence as to the amount of the trust income or the financial status of the grantor. Nor is there evidence that the other trustee was ever informed of the agreement.

We are impressed by the fact that although the trust indenture was in writing, the petitioner is relying on an alleged oral amendment to vary its terms. The normal way to effect an amendment thereof would have been by a similar written instrument.

We are of the opinion that at the date of her death, the decedent, under the terms of the trust, had the right to have the trust principal applied for her support and maintenance and therefore the value of the trust is includible in her gross estate

as a transfer intended to take effect in possession or enjoyment at or after death.

In view of our decision it is not necessary to consider the applicability of the other parts of section 811 (c).

Decision will be entered for the respondent. [94]

The Tax Court of the United States
Washington

Docket No. 3507

ESTATE OF MARGARET P. GALLOIS, deceased,
JOHN E. GALLOIS, Executor, and
JEANNE G. HILL, Executrix,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion promulgated February 27, 1945, it is Ordered and Decided: That there is a deficiency in estate tax in the amount of \$19,323.36.

Enter:

(Signed) ERNEST H. VAN FOSSAN
Judge.

Entered Feb. 27, 1945. [95]

[Title of Tax Court and Cause.]

PETITION FOR REVIEW BY THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT:

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Now comes the petitioner in the Estate of Margaret P. Gallois, Deceased, John E. Gallois, Executor, and Jeanne G. Hill, Executrix, and respectfully shows:

I

Jurisdiction

The petitioners on review, hereinafter referred to as the taxpayers, are John E. Gallois, Executor, and Jeanne G. Hill, Executrix, of the Estate of Margaret P. Gallois, deceased. Said executor and executrix filed a federal estate tax return with the Collector of Internal Revenue of the First District of California, located in the City of San Francisco, State of California, and within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit within [96] the time allowed by law after the date of the death of Margaret P. Gallois on August 8, 1940.

The respondent on review is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, hereinafter referred to as the Commissioner, holding his office by virtue of the laws of the United States.

II

Nature of Controversy

After the taxpayers duly filed the estate tax return on behalf of the Estate of Margaret P. Gallois, deceased, who died testate on August 8, 1940, the Commissioner determined a deficiency in the estate tax against the Estate of Margaret P. Gallois in the amount of \$19,323.36. The Commissioner included the entire value at the date of the death of Margaret P. Gallois of the corpus of the trust created by her on August 9, 1924, in the estate of the decedent under the provisions of Section 811-C of the Internal Revenue Code. During the years 1919 to 1922 John E. Gallois borrowed a total of \$251,000 from the decedent, Margaret P. Gallois, with no evidence of the indebtedness being executed in writing. On August 9, 1924, Margaret P. Gallois executed a trust, naming herself, Emile M. Pissis and William H. Cook as trustees.

The trustees were directed to apply the income of the trust (a) to the payment of interest due or to become due on the obligations of the decedent, secured by liens on the trust property; (b) to the payment of taxes, assessments, insurance, repairs, etc.; and (c) after payment of the above charges, to pay the remainder of the net income to the decedent. [97]

Other material provisions of the trust are as follows:

Second: The Trustees are likewise authorized and directed to apply to the maintenance and support of said Margaret P. Gallois any portion of

the principal of said trust fund which may at any time be in their opinion necessary for her maintenance and support by reason of or in the event of any deficiency in the income of said trust fund.

Third: Upon the death of said Margaret P. Gallois the said trust and the powers and duties of the surviving Trustees shall continue during the life of Jeanne G. Hill and during her life the net income from said property, as hereinbefore defined, shall be paid by said surviving Trustees to said Jeanne G. Hill.

* * * *

Fifth: Upon the death of said Jeanne G. Hill the said trust shall cease and determine and all of said trust property then remaining in the hands of said surviving Trustee shall go to and vest absolutely in equal shares in the children of said Jeanne G. Hill. If, at the time of the death of said Jeanne G. Hill, any of her children shall have died leaving issue, such issue shall receive the share of said trust property to which such deceased child would have been entitled if living. If all of the children of said Jeanne G. Hill should predecease her, then upon her death said trust fund and the whole thereof shall go to and vest in John Gallois, if living, and if he be then dead, then it shall vest in the next of kin of said Jeanne G. Hill, in accordance with the succession laws of the State of California then in effect. In the event of the death of said Jeanne G. Hill prior to the death of said Margaret P. Gallois, said trust shall cease and determine upon the death of said Margaret P. Gallois,

and said trust fund and the whole thereof shall go to and vest in the children of Jeanne G. Hill and their issue, as hereinbefore provided. If said Jeanne G. Hill and all her children die without issue prior to the death of said Margaret P. Gallois, then this trust shall terminate and the trust funds shall vest in said Margaret P. Gallois.

* * * *

Ninth: Whereas said Margaret P. Gallois heretofore laid out and expended for the account and benefit of John Gallois the sum of \$251,000 or thereabouts, exclusive of interest, and this agreement is made in part for the purpose of insuring to Jeanne G. Hill and her children a benefit which may to some extent correct the discrepancy [98] between the moneys received by said Jeanne G. Hill from said Margaret P. Gallois and the outlays of said Margaret P. Gallois on behalf of said John Gallois.

Now, therefore, notwithstanding anything which may be hereinbefore contained, it is provided that at the time of the death of said Margaret P. Gallois, if there has been paid to her by John Gallois or on his account sums of money sufficient so that the said Margaret P. Gallois shall have been reimbursed to such extent that the amount unpaid is less than the value of the assets in the annexed schedule, exclusive of any claim against John Gallois, as appraised at the time of her death, then fifty (50%) per cent of the excess of the value of said property over and above the amount of such outlays remaining unpaid shall go to and vest in said John Gallois and the balance of said property

shall vest as hereinbefore provided. If, at the time of the death of said Margaret P. Gallois, the amount of such unpaid outlays made by her on behalf of John Gallois, still exceeds the then value of the trust fund in the hands of said Trustees, exclusive of any claim against John Gallois, the whole of said fund shall go to and vest in the children of Jeanne G. Hill, after her death as hereinbefore provided, but said John Gallois shall not at any time be deemed indebted to said Trustee or to the estate of Margaret P. Gallois, nor shall any attempt be made by the Trustees or any successors of Margaret P. Gallois to collect any part of said outlays from said John Gallois, and if the same shall at the death of Margaret P. Gallois apparently exist as an indebtedness, such indebtedness shall be deemed forgiven and cancelled, together with any instruments, documents or writings of any kind constituting evidence of any such indebtedness, so that the same cannot go to or vest in any successor of Margaret P. Gallois under the terms of this instrument or otherwise.

The decedent retained no power to alter, amend or revoke the trust.

At the time the trust was created, the decedent was 68 years of age and in good health for a woman of that age. She had 2 children, John aged 38, and Jeanne aged 36, and 3 grandchildren of the ages of 7, 5 and 1, respectively, all being the children of Jeanne. She left surviving her at her death 2 children, 3 grandchildren, and 3 great grandchildren, Harry Poett III, aged 1 year and 8 months, Caro-

Ian Poett, aged 5 months, [99] and Louise Haley, aged 5 months.

The decedent's son was unaware of the trust at the time of its creation and did not learn of its existence until about 2 years later.

Decedent's daughter, Jeanne, was married to Horace Hill, Jr., who had been well off, but who, in the period from 1924 to 1928, was in very straitened circumstances. It was to protect her daughter from further loss that the decedent had created the trust. The trust had an indebtedness greater than the market value of the property in the trust and John was constantly being pressed by Hill and others to pay the amount he owed his mother. He was unable to make any payments on his indebtedness until 1927. Between December 19, 1927, and September 13, 1928, he made payments aggregating about \$42,000.

By October, 1928, John was financially able to pay the balance of the money he had borrowed from his mother. At that time he and the decedent agreed orally that he would pay back the sums he had borrowed upon condition that he was made a trustee and that the corpus of the trust would not be invaded again. She agreed to these conditions and John then executed his promissory note, dated October 30, 1928, in the sum of \$251,000 to the trustees.

Following this, and on November 7, 1928, two of the original trustees, Emile Pissis and William H. Cook, resigned, and John E. Gallois and Jeanne G. Hill were appointed trustees in their place. Fol-

lowing his appointment as trustee, John paid the balance of his indebtedness.

The Tax Court of the United States approved the Commissioner's [100] determination by including the entire corpus of the trust created by Margaret P. Gallois on August 9, 1924, in the decedent's gross estate under the provisions of Section 811-C of the Internal Revenue Code. The contention of the taxpayers is that this determination is in error and that no part of the trust corpus should be included in the estate of Margaret P. Gallois for estate tax purposes.

III

Assignment of Errors

The taxpayers aver that in the record and proceedings before the Tax Court of the United States and in the opinion and final decision rendered and entered by the Tax Court of the United States, manifest error occurred and intervened to the prejudice of the taxpayers, which now assign the following errors and each of them, which they aver occurred in said record, proceedings, opinion and final decision so rendered by the Tax Court of the United States:

1. Error was committed in including in the corpus of the estate for estate tax purposes the corpus of the trust created August 9, 1924, and that the Tax Court did not properly interpret Section 811-C, excepting from the gross estate the property where there was a bona fide sale for an adequate and full consideration in money or money's worth.

2. Error was committed by the Tax Court of the United States in failing to give proper consideration to the agreement of the decedent that the corpus of the trust would not be invaded again upon the repayment of the \$251,000 by John E. Gallois and by including any part of the trust corpus in the [101] estate for estate tax purposes.

Wherefore, taxpayers respectfully petition that the decision of the Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with the law and with the rules of said Court and transmitted to the Clerk of said Court for filing and that appropriate action be taken to end the errors by review of said Court.

(Signed) CLYDE C. SHERWOOD

(Signed) JOHN V. LEWIS

(Signed) JEROME POLITZER

Attorneys for Petitioners

State of California

City and County of San Francisco—ss.

John V. Lewis, being duly sworn, says: I am one of the attorneys for the petitioners in this proceeding; I prepared the foregoing petition and am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information, and belief. This petition is not filed for the purpose of delay, and I believe

the petitioners are justly entitled to the relief sought.

(Signed) JOHN V. LEWIS

Subscribed and sworn to before me this 18th day of May, 1945.

[Seal] (Signed) LOUIS WIENER
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: T.C.U.S. Filed May 24, 1945.

[Title of Tax Court and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Commissioner of Internal Revenue
Internal Revenue Building
Washington, D. C.

J. P. Wenchel, Attorney for Respondent
Chief Counsel, Bureau of Internal Revenue
Internal Revenue Building,
Washington, D. C.

You Are Hereby Notified that on the 24th day of May, 1945, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above-entitled cause, was filed with the Clerk of the Court. A copy of the petition as filed is attached hereto and served upon you.

Dated: May 24, 1945.

CLYDE C. SHERWOOD

JOHN V. LEWIS

JEROME POLITZER

Attorneys for Petitioner

Service of the foregoing Notice of Filing and of the copy of Petition for Review is hereby acknowledged this 24th day of May, 1945.

J. P. WENCHEL, CAR

Chief Counsel, Bureau of Internal Revenue,

Attorney for the Respondent

[Endorsed]: T.C.U.S. Filed May 24, 1945.

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[Title of Tax Court and Cause.]

DESIGNATION OF THE PORTIONS OF THE
RECORD, PROCEEDINGS AND EVIDENCE
TO BE CONTAINED IN THE
RECORD ON APPEAL

To: Commissioner of Internal Revenue,
Internal Revenue Building
Washington, D. C.

J. P. Wenchel, Attorney for Respondent
Chief Counsel, Bureau of Internal Revenue
Internal Revenue Building,
Washington, D. C.

You and each of you are hereby notified that the petitioner above named hereby designates the por-

tions of the record, proceedings and evidence to be contained in the record on appeal as follows, to-wit:

1. The docket entries
2. The petition to the Tax Court of the United States
3. Answer of the Commissioner
4. The entire transcript of the evidence prepared by the stenographic reporter
5. Findings of fact, opinion and decision of the Tax Court of the United States
6. Petition for review by the United States Circuit Court of Appeals for the Ninth Circuit and the Assignment of Errors therein contained [106]
7. Notice of filing petition for review and assignment of error
8. This notice designating the portions of the record, proceedings and evidence to be contained in the record on review dated at San Francisco, California, May 18th, 1945.

CLYDE C. SHERWOOD

JOHN V. LEWIS

JEROME POLITZER

Attorneys for Petitioner

Service of the foregoing designation of the portions of the record, proceedings and evidence to be contained in the record on review is hereby acknowledged this 24th day of May, 1945.

J. P. WENCHEL, CAR

Chief Counsel, Bureau of Internal Revenue,

Attorney for the Respondent

[Endorsed]: T.C.U.S. Filed May 24, 1945.

[Title of Tax Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 107, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 8th day of June, 1945.

[Seal] B. D. GAMBLE

Clerk,

The Tax Court of the United States.

[Endorsed]: No. 11080. United States Circuit Court of Appeals for the Ninth Circuit. John E. Gallois, Executor and Jeanne G. Hill, Executrix of the Estate of Margaret P. Gallois, Deceased, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the Tax Court of the United States.

Filed June 25, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11080

ESTATE OF MARGARET P. GALLOIS, Deceased;
JOHN E. GALLOIS, Executor; and
JEANNE G. HILL, Executrix,
Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF FACTS UPON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF RECORD TO BE PRINTED

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit; and

To Samuel O. Clark, Jr., Assistant United States Attorney General; and J. P. Wenchel, Esq., Chief Counsel, Bureau of Internal Revenue:

You and Each of You Are Hereby Notified that appellant hereby adopts as its statement of points upon which appellant intends to rely on appeal the following assignment of errors:

1. Error was committed by the Tax Court of the United States in including in the corpus of the estate of Margaret P. Gallois for estate tax purposes the corpus of the trust created August 9, 1924.

2. Error was committed by the Tax Court of the United States in including the corpus of the trust in the estate for estate tax purposes where there was a bona fide sale for an adequate and full consideration in money or money's worth bringing the case squarely within the exception provided for in Section 811(c) of the Internal Revenue Code.

3. Error was committed by the Tax Court of the United States in holding that the corpus of the trust was includible in the estate of Margaret P. Gallois regardless of the fact that Margaret P. Gallois had an oral agreement with John E. Gallois that upon the repayment by John E. Gallois of \$251,000.00 she would not invade the corpus of the trust.

Appellant hereby designates for printing the entire transcript of the proceedings before the Tax Court of the United States.

Dated: June 29, 1945.

CLYDE C. SHERWOOD

JOHN V. LEWIS

JEROME POLITZER

Attorneys for Appellant

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jul. 2, 1945. Paul P. O'Brien,
Clerk.